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No. 65007-6-1

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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TRACY J. HATCH,

Appellant,

vs.

JOHN D. HATCH,

Respondent.

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APPEAL FROM THE SUPERIOR COURT  
FOR SNOHOMISH COUNTY  
THE HONORABLE RONALD L. CASTLEBERRY

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BRIEF OF RESPONDENT

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## **I. RESTATEMENT OF ISSUES**

1. The parties have four sons, ages 5 through 12. Both the guardian ad litem and the psychologist who conducted CR 35 examinations on the parents recommended a parenting plan that gave both parents substantial access to the children. Did the trial court abuse its discretion in designing a parenting plan that provided that the children reside equally with both parents on a week-on and week-off basis, based on its finding that a joint custody arrangement would be in the children's best interests as it "will increase each parent's bond with the children while minimizing conflict and transfers between them. It also allows both parents respite from the care and stress of the four young boys?"

2. By the time of trial, the parties had few assets to divide. The only significant asset was the family home, of which any equity was largely outweighed by its debts. Did the trial court abuse its discretion in awarding the home to the husband, subject to all of its debts, based on its finding that it was unlikely that the wife could maintain the monthly mortgage payment or be able to refinance it, and its award of maintenance would be sufficient for

her “to be able to find more suitable housing at a much more affordable monthly cost?”

3. For fifteen months while the dissolution was pending, the wife received spousal maintenance, plus the husband continued to pay the mortgage on the family residence where she was residing. Although the wife expressed a preference to not work, no evidence was presented that she was unable to become gainfully employed. Did the trial court abuse its discretion in awarding monthly spousal maintenance of \$2,000 per month to the wife for nearly four more years after trial?

4. Did the trial court abuse its discretion in considering an email that the husband obtained using “keystroke” software, which he installed on the family computer while he still resided in the family residence, when the wife did not object to its admission at trial, there was no dispute as to the email’s authenticity, and when, even if it had been excluded as evidence, there is substantial other evidence to support the trial court’s orders?

5. Does this court have authority to consider appellant’s challenge to an order on contempt, which was apparently entered months after final orders were entered, when appellant fails to

include the challenged order as part of the appellate record, and more fatally, did not file a notice of appeal from this order?

6. Should this court award attorney fees to the respondent for having to respond to this appeal when the appellant's opening brief only minimally complies with the appellate rules requiring proper citations to the record, thus causing respondent to waste considerable time checking for the accuracy of the factual claims in her brief, and when appellant challenges rulings that are entirely fact-based and within the trial court's discretion?

## **II. RESTATEMENT OF FACTS**

After a three-day trial, the trial court entered a parenting plan that allowed the parties' four young sons, then ages 4 through 11, to reside equally with both parents. The trial court rejected each parent's request to be designated as the primary residential parent. Instead, the trial court found that an equal residential schedule was in the children's best interests. With regard to the parties' property, in light of their limited assets, the trial court awarded the husband the family residence, which was at that point essentially "underwater" because the debts nearly exceeded the equity, and

provided the wife with four years of spousal maintenance, in addition to the fifteen months of maintenance that she received prior to trial.

The appellant's brief challenges these decisions, but her complaints are almost entirely based on factual disputes that the trial court resolved in the husband's favor, or on disputed "facts" that occurred months after the trial concluded. For example, appellant quotes from emails between the parties that were exchanged five to ten months *after* trial. (See *e.g.* App. Br. 10-11, 21-22, 35-37) Further, appellant has "papered" the appellate court record with documents that she relies on to challenge the trial court's decision, but that were never presented to the trial court. (See *e.g.* CP 51-91 ("Statement of Additional Grounds"<sup>1</sup>); CP 109-291 (Notice of Discretionary Review with 16 exhibits)) Finally, in most instances, appellant simply makes factual claims with no citation to the record, because, in fact, there is no support in the

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<sup>1</sup> Commissioner James Verellen had previously recognized that this "Statement of Additional Grounds" was not part of the trial court record in an earlier ruling addressing appellant's moot Motion for Discretionary Review. (April 8, 2010 Ruling: "Ordered that the 'documentation' filed by Ms. Hatch and her 'Statement of Additional Grounds' are not part of the trial court record on appeal.")

record for her claims. (See e.g. App. Br. 8, 10, 14, 15-16, 17-18, 19, 23, 26-27, 35-37)

Consistent with RAP 10.3(a)(5), the following restatement of the case provides a fair characterization of the facts presented at trial (and appropriate references to the record) and the substantial evidence that the trial court relied on in making its findings in support of its final orders:

**A. The Parties Have Four Young Sons And One Adult Daughter. The Husband Worked Outside The Home While The Mother Stayed At Home.**

Respondent John Hatch, age 42, and appellant Tracy Hatch, age 44, were married on May 21, 1988. (RP 24) They have five children: Kirstin, age 22, Jonah, age 12 (DOB 6/02/1998), Ethan, age 9 (DOB 6/23/2001), Caleb, age 7 (DOB 2/06/2003), and Aidan, age 5 (DOB 3/18/2005). (RP 24-25; Ex. 21 at 1)

John is employed at Microsoft in the IT department as a service manager, earning \$6,800 net per month. (RP 25, 206) Tracy, who has a high school diploma and worked early in the marriage, has been a stay at home mother since 2000. (RP 32, 263)

During the marriage, Tracy was primarily responsible for the care of the children during the day while John worked outside the home. (RP 237) John was involved in the children's care in the evenings and on weekends, and was "primarily responsible" for assisting them with their homework. (RP 29-31)

**B. The Parties Separated After A Confrontation That Resulted In A Domestic Violence Charge Against The Husband That Was Later Dismissed By The Prosecutor's Office.**

The parties separated on September 16, 2008, after an incident during which John confronted Tracy about her suspected infidelity. (RP 34-36<sup>2</sup>; CP 426, 436) John had previously discovered intimate emails between Tracy and Vanessa Mastandrea, whom Tracy had met on-line. (RP 34-35) Tracy refused to answer John's allegation and he followed her into the parties' bedroom. (RP 36) When Tracy attacked John with a hammer, hitting him on the arm, John grabbed the hammer, pushed Tracy down, and immediately left the home. (RP 36)

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<sup>2</sup> At trial, it was stated that the alleged domestic violence incident occurred on December 16, 2008. (RP 34) But it is not disputed that this incident actually occurred on September 16, 2008, the date of the parties' separation. (See CP 426, 436; Ex. 21 at 2)

John voluntarily returned to the home to speak to a police officer after he learned that Tracy had contacted the police regarding the incident. (RP 36-37) The police officer on the scene arrested John. (RP 37) However, the prosecutor's office subsequently dismissed the charges against John after he explained that he acted in self-defense. (RP 37)

While John was still in jail, Tracy sought, and obtained, a domestic violence protection order against John, which the parties agreed would not be renewed after conclusion of the trial. (See RP 21, 37, 83; Ex. 16, 18) As a result of the order, Tracy and the parties' sons remained in the family residence, while John, who could not afford any other housing, moved into a guest bedroom with his brother's family. (RP 44) The parties' adult daughter, Kirstin, also moved in with John's brother because Tracy kicked her out of the family residence soon after the parties separated. (RP 44)

**C. The Court Entered Temporary Orders Requiring The Husband To Pay The Wife Support And Limiting His Residential Time With The Parties' Sons. These Orders Were Subsequently Modified To Reduce The Husband's Support Obligation And Increase His Time With The Children.**

On October 1, 2008, a court commissioner ordered John to pay combined maintenance and child support to Tracy of \$5,000 per month due to an incorrect calculation of his income. (RP 42; Ex. 11 at 5) John was also ordered to pay the mortgage and line of credit for the family residence of approximately \$3,100 per month. (RP 42, 157; Ex. 11 at 5) John's court-ordered monthly obligations of \$8,100 exceeded his monthly net income of \$6,800 per month, forcing John to liquidate assets in order to meet these obligations. (RP 43, 206) At trial, the trial court found that John "properly used" community assets for this purpose. (Finding of Fact (FF) 2.8, CP 385)

As a result of Tracy's domestic violence allegations against John, the court entered a temporary parenting plan that restricted John's residential time with his sons to alternating weekend day visits. (RP 47; Ex. 12 at 2) John was allowed no overnight visits or mid-week visits with the sons. (RP 47) The court appointed David Hodges as the guardian ad litem to "investigate and report factual

information to the court concerning parenting arrangements for the children.” (CP 430)

On March 19, 2009, a court commissioner increased John’s residential time with the children after the guardian ad litem issued an interim report recommending that John’s time be increased “as soon as possible.” (Ex. 13, Ex. 21 at 25) The guardian ad litem reported that despite Tracy’s allegations, John “does not appear ever to have been a risk to the children.” (Ex. 21 at 22) In fact, the guardian ad litem noted that Tracy appeared to be the party who “initiated more of the physical force and aggression.” (Ex. 21 at 21)

John’s residential time was increased to two weekends per month from Friday afternoon through Monday morning. (RP 62, Ex. 13) John also received two mid-week visits during those weeks that he did not have his sons for the weekend. (RP 62, Ex. 13)

Given that John’s court-ordered financial obligations under the temporary order far exceeded his total actual net income, the court commissioner reduced John’s monthly support payment from \$5,000 to \$2,000 but ordered him to continue to pay the mortgage. (RP 58, Ex. 13) At trial, the trial court found that because of the earlier temporary order, the community’s retirement and savings

accounts were exhausted, and there was “no further community retirement accounts or savings accounts subject to division.” (FF 2.8, CP 385)

**D. While The Dissolution Was Pending, The Wife Allowed A Woman With Mental Health Issues To Move Into The Family Residence With Her And The Parties’ Sons. Neighbors Expressed Concern Over The Woman’s Behavior And The Wife’s Lack Of Supervision Over The Young Sons.**

**1. As A Result Of The Mother’s Decisions, The Children Were Exposed To A Woman Who Suffers “Manic Episodes” When She Cannot Distinguish Between Reality And Fiction.**

Within two weeks after the parties separated, Ms. Mastandrea, the woman with whom John suspected Tracy was having an affair, moved into the family residence with her autistic nine-year old son. (RP 39; Ex. 21 at 17) Tracy had previously described Ms. Mastandrea to John as having mental health issues and no real means of supporting herself other than selling toys on eBay. (RP 39) John was concerned that Ms. Mastandrea was “preying” on Tracy and would take advantage of her. (RP 40) In fact, through discovery, John learned that Tracy was transferring some of the \$5,000 support payment that was intended for her and their sons to an account in Ms. Mastandrea’s name only. (RP 57) John also noticed that there had been a large sum of money being

spent during this period, “several thousands of dollars of purchases of electronics and money transfers to [Ms. Mastandrea]’s account, which [ ] only could have been based on the maintenance [he] was providing to Tracy.” (RP 57)

At trial, Ms. Mastandrea testified that she was diagnosed with bipolar disease and post-traumatic stress. (RP 287-88; see *also* Ex. 21 at 17) Ms. Mastandrea described “manic episodes” that last a day when she cannot distinguish “between what’s real and what isn’t real,” and will become “lost in [her] head.” (RP 288, 289) Ms. Mastandrea testified that during these episodes, she “get[s] down on [her]self” and needs to “take it out on things.” (RP 289) Ms. Mastandrea denied that her episodes would have any effect on the children, explaining that when she has an episode, she will usually just go into a room. (RP 289) However, apparently during one manic episode, Ms. Mastandrea was removed from the family home in an ambulance. (RP 177-78; 286-87)

John was also concerned about Ms. Mastandrea because he had discovered an email from her to Tracy, in which she expressed excessive anger towards John, her desire to kill him, and encouraged Tracy to manipulate the court system to obtain sole

custody of the children. In her email to Tracy, Ms. Mastandrea stated:

ATTORNEY – it is VERY important that YOU serve him first... you need the upper hand. Email that one – you want alimony, child support, the house (throw it in for kicks) SOLE LEGAL CUSTODY, insurance coverage, your car, and half of everything that the fuck makes for the rest of his life..i am sorry, I have to say it, I want to kill the fuck...I'm sorry it had to begin this way and I'd love to kill the fuck but I did what needed to be done and he's out the door.

(Ex. 18) At trial, Ms. Mastandrea did not deny writing this email, but explained that she “had the right to be upset and angry.” (RP 292)

Tracy told the guardian ad litem that she and Ms. Mastandrea shared the same bed, but adamantly denied that they were in a relationship. (Ex. 21 at 6) Tracy told the guardian ad litem “that they are just friends, nothing more.” (Ex. 21 at 6) The trial court expressed concern about Tracy lying to the guardian ad litem. (FF 2.21, CP 391) The trial court did not consider as a negative the fact that Tracy was in a romantic relationship with Ms. Mastandrea “in any way,” (FF 2.21, CP 391) and in fact, during trial the trial court adamantly stated that it did not believe Tracy's sexual orientation was “relevant or material,” and was “not concerned with the fact that [Tracy] had an affair.” (RP 34) However, the trial court

stated “what is disturbing to the court [ ] is Ms. Hatch’s constant denials about the relationship to the court, the Guardian ad Litem, and Dr. Schau. She lied about it to all of them. Lying to the Guardian Ad Litem is especially troubling to the court given that he was charged with investigating these [parenting] matters and reporting back to the court.” (FF 2.21, CP 391)

The guardian ad litem also expressed concern about reports by the neighbors regarding Ms. Mastandrea. One neighbor, Rachel Thomas, who also testified at trial, reported that on Halloween, Ms. Mastandrea was outside with two of the Hatch children, and appeared to be “under the influence of substances because her eyes [were] glossy [sic] and she repeat[ed] herself.” (Ex. 21 at 18; RP 172-73) Ms. Thomas described Ms. Mastandrea as “hyper and inappropriately affectionate . . . hanging on the boys and repeatedly telling them she loved them.” (Ex. 21 at 19; RP 172-73)

Ms. Thomas testified that after Ms. Mastandrea learned that she had spoken to John, Ms. Mastandrea came to Ms. Thomas’ home, “got in [her] face,” and stated: “you do not want to get involved in this divorce, it will be messy.” (RP 173) Ms. Thomas expressed concern about retaliation from both Tracy and Ms.

Mastandrea for conveying her concerns about the sons to the guardian ad litem and John. (RP 183) Another neighbor interviewed by the guardian ad litem declined to be identified because she too was afraid of Ms. Mastandrea. (RP 94-95)

During his initial investigation, the guardian ad litem learned that Ms. Mastandrea had previously been reported to DSHS due to allegations related to her son. (Ex. 21 at 17) Ms. Mastandrea also self-reported having physical and mental health issues. (Ex. 21 at 17) The guardian ad litem stated that a further investigation into Ms. Mastandrea might be warranted to discover further information regarding the DSHS report against her, “her prior mental health treatment, and possible history of substance abuse.” (Ex. 21 at 26) Accordingly, the court ordered the guardian ad litem to further investigate Ms. Mastandrea before trial. (Ex. 13) Although the guardian ad litem attempted to gain additional information before trial, Ms. Mastandrea successfully avoided any further investigation. (RP 102-03)

**2. The Mother Left The Children Either Unsupervised Outside Or Sequestered Inside The House.**

Beyond the detrimental impact that Ms. Mastandrea was possibly having on the children while in Tracy’s care, John was

concerned that their sons, then ages 4 through 11, were either sequestered in the house, unable to play with their friends, or left outside unsupervised. (RP 63-65) Their neighbor, Ms. Thomas, testified that due to Tracy's lack of supervision, the second youngest child was nearly hit by a car on "several" occasions. (RP 171) Ms. Thomas also testified that because of the lack of supervision, the sons physically fought while left unattended in the neighborhood, "throwing scooters and skateboards at each other and fighting." (RP 187) Another neighbor described the sons "as always fighting and punching each other, yelling 'every word in the book.'" (Ex. 21 at 19) The neighbor stated that she believed that the sons' behavior "certainly means something is wrong, whether it is due to lack of attention or being allowed to behave in that manner." (Ex. 21 at 19) Another neighbor reported that she had heard Tracy "screaming at the boys when she is outside, or in the garage, and has heard her screaming even when in the house." (Ex. 21 at 19-20)

Neighbors reported to the guardian ad litem that before the parties separated, they typically saw John outside with the sons supervising them. (RP 115) Ms. Thomas testified that she

believed that the children's behavior has worsened since John left the home. (RP 175, 193)

**E. Both The Guardian Ad Litem And The Court-Appointed CR 35 Examining Psychologist Expressed Concern Regarding The Mother's Psychological Issues. Neither Of Them Expressed Significant Concern About The Father. Both Recommended The Father Have "Substantial" Time With The Children.**

**1. The Guardian Ad Litem Recommended A Parenting Plan That Provided Both Parents With Access To The Children "And Respite From The Burdens Of That Access As Well."**

The guardian ad litem found there was no basis for any restrictions on John's residential time. (Ex. 21 at 22) He did not believe there was any concern for the sons as a result of Tracy's allegations of domestic violence against John. (Ex. 21 at 22) The guardian ad litem determined that the "father does not appear to be an ongoing risk to the mother and does not appear ever to have been a risk to the children." (Ex. 21 at 22) While the guardian ad litem determined that both parties used physical force in the relationship, he concluded that the "mother appears to have been more reactive and impulsive, apparently losing her temper, throwing things and on occasion hitting the father with her hands and fists." (Ex. 21 at 21)

In his initial report, the guardian ad litem did not recommend restrictions on Tracy's residential time with the children, but he did state that "there appears to be a sufficient basis to require limitations in the parenting plan [on the mother] based on a long-term emotional or physical impairment which interferes with the parent's performance of parenting functions." (Ex. 21 at 23) In particular, the guardian ad litem noted that the mother has had "longstanding problems with anxiety, depression, and some level of agoraphobia." (Ex. 21 at 23) The guardian ad litem expressed concern that these issues were impacting the children and were the cause of many of the concerns expressed by third parties regarding the children. (Ex. 21 at 23) Specifically, neighbors were "unanimous in expressing concern about the lack of supervision of the children [outside] and in expressing concerns about the boys' unruly, aggressive, and verbally inappropriate behavior." (Ex. 21 at 23)

At trial, the guardian ad litem explained that while he believes the father is the "more stable" parent "in some ways," he was nonetheless "skeptical" that the father's work schedule would allow him to be the primary residential parent. (RP 119) The

guardian ad litem testified that a parenting plan for the parties' four young sons that gave both parents access to the children as well as "respite from the burdens of that access" would be in the children's best interests. (RP 119-20) The guardian ad litem also testified that an equal residential schedule was a "possibility" as it would provide the children with the full and complete support of both parents. (RP 121)

**2. The Court-Appointed Psychologist Expressed Concern Over The Mother's "Serious Psychological Issues" And Suggested That An Equal Residential Schedule Would Provide The Mother With The Assistance She Needed To Better Parent The Children.**

As a result of the guardian ad litem's initial report expressing concerns over the mother's mental health, and on John's motion, the court ordered Tracy to undergo a CR 35 examination. (Ex. 13) The court stated that while it "is not finding there is a mental health issue [it is] ordering this to rule out any possible condition." (Ex. 13) Although not ordered to do so, John voluntarily agreed to his own CR 35 examination. (RP 69-70) Dr. Edward J. Schau was selected to conduct the CR 35 examinations on both parties. (RP 69)

Dr. Schau expressed concern over Tracy's "emotional impairment," and found that she had "serious psychological issues." (Ex. 19 at 8) Dr. Schau diagnosed Tracy with "social anxiety disorder" and a "dependent personality disorder." (RP 313-14) Dr. Schau noted that the social anxiety disorder could impact the children to the extent that it prevents her from doing activities with the children outside the home. (RP 313) This concern was consistent with the neighbors' reports that the children were either sequestered in the home or left unsupervised outside. (*See supra* § D.2)

Dr. Schau also noted that the dependent personality disorder could impact the children to the extent that Tracy had become dependent on Ms. Mastandrea as a caregiver for the children. (RP 319) In his testing, Dr. Schau found that Tracy had a Global Assessment Function (GAF) of 55, which is "moderate to serious impairment in social functioning." (RP 318) Ms. Mastandrea had a GAF of 48.<sup>3</sup> (Ex. 19 at 6; RP 319-20) Dr. Schau testified that a score of 40 describes a person with "some impairment in reality testing or communication or a major impairment in several areas,"

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<sup>3</sup> Dr. Schau did not test Ms. Mastandrea. Ms. Mastandrea apparently provided Dr. Schau with a report from her own psychiatrist providing her GAF score. (Ex. 19 at 6)

and a score of 50, describes a person with “serious symptoms or serious impairment in social and occupation functioning.” (RP 320; Ex. 19 at 6) Dr. Schau testified that with both women having low GAF scores, he found that the picture emerging of Tracy’s house was “barely managed chaos.” (RP 321; Ex. 19 at 7)

Dr. Schau concluded that these problems did not rise to a level that restrictions on Tracy’s parenting were necessary, but Tracy needed “help.” (Ex. 19 at 8) Dr. Schau noted that Tracy “is trying very hard to be a good mother and it is a struggle for her to perform the basic tasks of parenting.” (Ex. 19 at 8) Dr. Schau concluded that Tracy would have trouble caring for the boys without assistance. (RP 322)

Regarding John, Dr. Schau founded that he had no personality disorders. (RP 323) Dr. Schau did find that John had “low-grade depression,” and that John should work on “recognizing the emotional needs of himself and others.” (Ex. 20 at 7-8) Dr. Schau viewed John as a “committed father,” and had “no reason to doubt [John’s] love” for his children. (RP 323-24)

In his conclusion, Dr. Schau noted that the “more the boys are with their father would be a positive for the boys and also a

positive for Tracy.” (RP 322) At trial, he testified that from what he has seen of the parents, an equal residential schedule would be appropriate. (RP 327)

**F. The Trial Court Entered Final Orders After A Three-Day Trial.**

Although Tracy had been represented by counsel throughout dissolution proceedings, her counsel withdrew approximately two months before trial. (CP 420) On January 4, 2010, the parties appeared before Snohomish County Superior Court Judge Ronald L. Castleberry. (RP 1) Tracy represented herself *pro se*. Ms. Mastandrea was allowed to sit at counsel table with Tracy for “moral support.” (RP 9) The trial court denied Tracy’s oral motion to continue the trial date because there had already been one agreed continuance and all witnesses had been disclosed to Tracy with sufficient time to prepare for trial.<sup>4</sup> (RP 4, 7-8) The trial court also stated that in view of the dispute over parenting, “it would be in

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<sup>4</sup> In her brief, appellant complains that she had only received the CR 35 examination report for the husband on the morning of trial. (See App. Br. 4) But even if this were true, appellant does not state how she is prejudiced by the alleged late production. Appellant agreed to the report’s admission into evidence during trial (See RP 10), she had the opportunity to cross-examine Dr. Schau about the report during trial (RP 326), and on appeal, she heavily relies on the report to claim that the trial court abused its discretion in providing the husband with one-half residential time with the children. (See App. Br. 7-8, 17, 29, 34, 40, 41)

the best interest of the children to move this case on.” (RP 8) However, the trial court advised Tracy that she could renew her request if “during the course of the trial [ ] things are coming out that are new or that are surprising.” (RP 7) She did not renew her motion.

After three days of trial, the trial court entered final orders, including a parenting plan allowing the children to reside equally with both parents (CP 98-108), awarding child support to the mother (CP 395-411), dividing what limited assets the parties owned (CP 376-79), and awarding spousal maintenance to the wife. (CP 379) The trial court made extensive findings of fact in support of its final orders. (CP 383-94) The appellant fails to assign error to any of the trial court’s findings of fact. Accordingly, they are verities on appeal. *Marriage of Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999).

**1. The Trial Court Designed A Parenting Plan That Allowed The Children To Reside Equally With The Parents.**

The trial court expressed concern over the mother’s decision to involve Ms. Mastandrea in the children’s lives. The trial court found that Ms. Mastandrea is “a destabilizing factor and negative

influence in Ms. Hatch's home." (FF 2.21, CP 391, *unchallenged*) The trial court found that the Ms. Mastandrea "has had a negative influence and impact on the children." (FF 2.21, CP 391, *unchallenged*) As an example, the trial court noted evidence that the mother delayed in obtaining mental health counseling for the parties' oldest son after it was recommended by the guardian ad litem. (FF 2.21, CP 391, *unchallenged*) The trial court found that "this was likely due to the influence of Ms. Mastandrea." (FF 2.21, CP 391, *unchallenged*) The trial court also found that both the mother and Ms. Mastandrea "yell and scream in their home as reported by the neighbors. It is also true that they use inappropriate profanity in front of the children and speak negatively about Mr. Hatch in front of them too." (FF 2.21, CP 391, *unchallenged*)

Despite the trial court's concerns about the environment in the mother's home, the trial court declined to impose any restrictions in the parenting plan. (See CP 99) Instead, the trial court designed a parenting plan that allowed the children to reside

equally with both parents. (CP 98-108)<sup>5</sup> In making its decision, the trial court acknowledged the psychologist's recommendation that "given the age and energy level of the boys, both parents will need respite time so that they can have some time on their own, and that the parenting plan should be structured to allow that, [and] that the parenting plan should minimize the number of transfers between the parents in order to minimize conflict." (FF 2.21, CP 392, *unchallenged*)

The trial court found "that the boys are closely and equally bonded to both of their parents. Since the separation, Mr. Hatch has begun to engage in more of the parenting with the boys than he did prior to the separation. The boys have indicated to the Guardian ad Litem that they greatly enjoy this time with their father." (FF 2.21, CP 392, *unchallenged*) The trial court concluded that it is in "the best interests of the children for a joint custody arrangement with a week-on/week-off residential schedule. This would accomplish what Dr. Schau had in mind and will increase each parent's bond with the children while minimizing conflict and transfers between them. It also allows both parents respite from

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<sup>5</sup> The trial court provided for a three-month transition schedule before the equal residential schedule took effect. (CP 99-100)

the care and stress of the four young boys.” (FF 2.21, CP 392, *unchallenged*)

**2. The Trial Court Ordered The Husband To Pay All Of The Debt, Awarded Him The “Underwater” Family Residence, And Awarded The Wife Four Years Of Spousal Maintenance.**

With regard to the parties’ financial matters, the trial court expressed concern about Tracy’s “totally unrealistic” requests at trial, finding that they were “motivated by revenge.” (FF 2.12, CP 388, *unchallenged*) Referring to the email that Ms. Mastandrea wrote to Tracy when the parties separated, which was admitted into evidence without objection (See RP 9-10), the trial court found that “Ms. Hatch and her partner Vanessa Mastandrea [ ] intended to manipulate the legal system to maximize her potential financial gain and to use the court as a weapon to wreak revenge upon Mr. Hatch.” (FF 2.12, CP 388, *unchallenged*) The trial court found that the wife’s financial requests “clearly exceeds Mr. Hatch’s ability to pay. Ms. Hatch knew this very well. Regardless, her desire for revenge motivated her to seek unrealistic relief at trial.” (FF 2.12, CP 388, *unchallenged*) The trial court found that “Ms. Hatch has the inappropriate idea that Mr. Hatch should sacrifice everything while she continues living the lifestyle to which she has become

accustomed during this litigation. That is not the law.” (FF 2.12, CP 388, *unchallenged*)

By the time of trial, the only assets available for division were the family home, which the trial court found “currently has a zero value to the community as any equity is outweighed by its debts,” the parties’ vehicles, and personal property. (FF 2.8, CP 385, *unchallenged*) The trial court acknowledged that the parties “did have some retirement assets and savings at the time of separation, [but] those assets were exhausted during the proceedings.” (FF 2.8, CP 385, *unchallenged*) The trial court found that these assets were “properly used” by the husband to meet his obligations under a temporary order that was based on an incorrect calculation of his income. (FF 2.8, CP 385, *unchallenged*)

The trial court awarded each party a vehicle and divided their personal property. (CP 376-78) The trial court awarded the “underwater” family residence to the husband. (CP 376) The trial court recognized that rather than selling the family residence at a cost, it would “benefit [ ] the children” to keep the house where they would reside with the father half-time. (FF 2.8, CP 385, *unchallenged*) The trial court also awarded the husband a separate

inheritance of \$75,000 that he received from his grandmother while the dissolution was pending. (CP 376)

In declining to award the residence to the wife, the trial court found that “assuming normal living expenses, Ms. Hatch will not be able to afford to continue living there and is almost certainly not going to be able to refinance it.” (FF 2.8, CP 385, *unchallenged*) However, the trial court found that with the spousal maintenance awarded to the wife she “will be able to find more suitable housing at a much more affordable monthly cost.” (FF 2.8, CP 385, *unchallenged*) The trial court ordered that the wife could remain in the residence for six additional months, until June 11, 2010, during which time the husband was ordered to pay the mortgage and pay the wife spousal maintenance. (CP 380) Thereafter, the wife was ordered to vacate the residence, so that the husband could move into the residence. (CP 380)

The trial court awarded spousal maintenance to the wife of \$2,000 per month through December 31, 2013. (CP 379) The trial

court also ordered the husband to pay child support of \$1,000 per month to the wife.<sup>6</sup> (CP 398)

Finally, the trial court ordered the husband to pay all of the community debts of approximately \$558,750, including the mortgage and line of credit on the family residence. (CP 378, 386-87) The trial court found that this “will free Ms. Hatch to get her feet on the ground without having any debts (except what she may have incurred post-separation). The court acknowledges that this is a disproportionate award of debt, but given the length of the marriage, the earning capacity of the parties, and the husband’s separate property (i.e. his \$75,000 inheritance), the court finds that this is appropriate.” (FF 2.10, CP 387, *unchallenged*).

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<sup>6</sup> The trial court ordered the husband’s child support obligation suspended during the six months that the wife resided in the family residence with the children half-time since during that period the husband was ordered to pay the mortgage of \$3,100, plus spousal maintenance. (CP 399; FF 2.12, CP 388)

### III. ARGUMENT

#### A. The Trial Court Did Not Abuse Its Discretion In Designing A Parenting Plan That Allowed The Parties' Sons To Reside Equally With The Parents.

##### 1. The Trial Court's Parenting Plan Was Designed With The Best Interests Of The Children In Mind And Was Well Within Its Discretion.

The trial court did not abuse its discretion in fashioning a parenting plan that allowed the parties' four young sons to reside equally in both parents' homes. The trial court found that "it is in the best interests of the children for a joint custody arrangement with a week-on/week-off residential schedule [that] will increase each parent's bond with the children while minimizing conflict and transfers between them. It also allows both parents respite from the care and stress of the four young boys." (FF 2.21, CP 392, *unchallenged*) This finding is unchallenged and it is a verity on appeal. ***Marriage of Brewer***, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). But even if the mother did challenge the finding, there is substantial evidence to support the trial court's finding. ***Marriage of Burrill***, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003) (this court will uphold a finding so long as substantial evidence supports the trial court's findings, regardless if there is other evidence that may contradict them). The substantial

evidence relied on by the judge includes un rebutted testimony from the guardian ad litem and psychologist, who both favored a parenting plan that gave both parents substantial residential time. (*supra* §II.E).

So long as the trial court's parenting plan was within its discretion, this court must affirm. Trial courts are given broad discretion to fashion a parenting plan based upon the children's best interests, after consideration of the statutory factors. ***Marriage of Jacobson***, 90 Wn. App. 738, 743, 954 P.2d 297, *rev. denied*, 136 Wn.2d 1023 (1998) (*citing Marriage of Littlefield*, 133 Wn.2d 39, 52, 940 P.2d 1362 (1997)). "[P]arenting plans are individualized decisions that depend upon a wide variety of factors, including 'culture, family history, the emotional stability of the parents and children, finances, and any of the other factors that could bear upon the best interests of the children.'" ***Parentage of Jannot***, 149 Wn.2d 123, 127, 65 P.3d 664 (2003).

Trial courts are afforded broad discretion in parenting matters "because so many of the factors to be considered can be more accurately evaluated by the trial judge, who has the distinct advantage of seeing and hearing witnesses, and is in a better

position to determine their credibility, than the members of an appellate court, who have access only to the printed record on appeal, and to the briefs and argument of counsel.” **Chatwood v. Chatwood**, 44 Wn.2d 233, 240, 266 P.2d 782 (1954). As such, appellate courts defer to the trial courts in making these decisions, **Jannot**, 149 Wn.2d at 127, and are “extremely reluctant” to disturb child placement decisions. **Parentage of Schroeder**, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001) (citations omitted).

Here, the trial court’s parenting decision was well within its discretion taking into consideration both the parties’ parenting abilities and the children’s needs.

**2. The Trial Court Was Not Bound By The Guardian Ad Litem’s Initial Recommendation That The Mother Be Designated As The Primary Residential Parent.**

The mother claims that the trial court abused its discretion in failing to “account” for the guardian ad litem’s recommendation. (App. Br. 5-6, 15) But the trial court was “free to ignore the guardian ad litem’s recommendations if they are not supported by other evidence or it finds other testimony more convincing.” **Fernando v. Nieswandt**, 87 Wn. App. 103, 107, 940 P.2d 1380, *rev. denied*, 133 Wn.2d 1014 (1997). While the trial court should

consider the recommendation of the custody evaluator, it is not bound by it. ***Marriage of Swanson***, 88 Wn. App. 128, 138, 944 P.2d 6 (1997), *rev. denied*, 134 Wn.2d 1004 (1998). The trial court must also independently weigh the parties' comments and criticisms of the evaluator's recommendations, and make its own assessment of the children's best interests. ***Swanson***, 88 Wn. App. at 138.

Here, the trial court did consider the guardian ad litem's written recommendation that the children reside primarily with the mother with "substantial, extended residential time to [the father]," but rejected it as not being in the children's best interests. (FF 2.21, CP 392) In finding that an equal residential schedule was more in the children's best interests than the guardian ad litem's written recommendation, the trial court considered the guardian ad litem's testimony at trial that "there are some ways that the father is the more stable of the two parents." (RP 119) The guardian ad litem testified that the "boys need a bigger slice of both parents" as opposed to a parenting plan that designated one parent as the primary residential parent with the other parent being provided only alternate weekends. (RP 119) The guardian ad litem also testified

that he was not rejecting an equal residential schedule, viewing it as a “possibility” so long as the parties could cooperate. (RP 121) Finally, the trial court considered the testimony of the psychologist who conducted psychological evaluations on both parties, who recommended an equal residential schedule to “maximize” the abilities of both parents. (RP 327)

**3. The Mother’s Claim That The Trial Court’s Parenting Plan Was Based On Her Sexual Orientation Is Baseless.**

The mother’s claim that the trial court “based his entire decision [ ] on the fact that the [mother] is gay” (App. Br. 20-21) is wholly baseless. The trial court did not impose any limitation on the mother’s residential time with the children because of her sexual orientation. In its findings, the trial court specifically stated that it did not “in any way” take into consideration the fact that the mother and Ms. Mastandrea were in a romantic relationship. (FF 2.21, CP 391, *unchallenged*; see also RP 34) As evident in its findings, for purposes of the parenting plan, the trial court only considered the mother’s relationship with Ms. Mastandrea for two reasons: 1) the mother’s decision to lie about the relationship to the guardian ad litem undermined her credibility, and 2) the negative influence Ms.

Mastandrea had on the mother and on the children. (FF 2.21, CP 391, *unchallenged*)

In fact, when the mother's sexual orientation was first raised during trial for the purpose of establishing the type of relationship between the mother and Ms. Mastandrea (temporary housemate versus more permanent partner), the trial court adamantly stated that the mother's sexual orientation was "not relevant or material." (RP 34) However, the trial court did acknowledge that to the extent there was evidence that the relationship itself, or Ms. Mastandrea individually, impacted the children, it would be relevant. (RP 34)

Here, the trial court properly considered evidence about Ms. Mastandrea – not because of the mother's sexual orientation - but because Ms. Mastandrea resided with the mother and had the potential to impact the children in the environment of their mother's home. The trial found that Ms. Mastandrea has "psychological issues, whether diagnosed as bipolar or posttraumatic stress syndrome, and she apparently has episodes where she is not in contact with reality." (FF 2.21, CP 391, *unchallenged*) The trial court also found that Ms. Mastandrea has had a "negative influence and impact on the children." (FF 2.21, CP 391, *unchallenged*)

There was substantial evidence to support the trial court's concerns regarding the mother's decision to allow Ms. Mastandrea to become extensively involved with the children. (*See supra* §II.D.1)

Under these circumstances, where a new partner resides with the mother and the children and that partner is significantly involved in the children's lives (*See* RP 295-300; Ex. 21 at 17, 18), the trial court does not abuse its discretion in taking into consideration this individual's psychological condition. This consideration was well within the trial court's discretion in fashioning the parenting plan. *See* RCW 26.09.187(3)(a)(v) (in designing a parenting plan, the court shall take into consideration the child's relationship with other "significant adults"); *see e.g.* RCW 26.09.191 (2)(b) (trial court can impose restrictions on a parent if they reside with someone that has limiting factors under RCW 26.09.191(1)). Furthermore, the impact of the individual on the stability of the mother's home was also a relevant consideration for the trial court in fashioning its parenting plan. *See Marriage of Magnuson*, 141 Wn. App. 347, 350, 352, ¶¶ 5, 12, 170 P.3d 65 (2007), *rev. denied*, 163 Wn.2d 1050 (2008) (it was not an abuse of discretion for the trial court to consider "the impact of [the father's

pending] gender reassignment surgery on the children” in designing a parenting plan – consideration of “environmental and parental stability” was an appropriate consideration in crafting a parenting plan).

The trial court’s parenting plan is in the best interests of the children. This court should affirm.

**B. The Trial Court’s Property Distribution And Spousal Maintenance Award Were Within Its Discretion.**

This court reviews the trial court’s property distribution and maintenance award for an abuse of discretion. *Marriage of Mansour*, 126 Wn. App. 1, 13-14, 106 P.3d 768 (2004). In light of the trial court’s broad discretion, a trial court’s property distribution will not be reversed on appeal absent a showing of a manifest abuse of discretion. *Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). The reason for the trial court’s broad discretion is that it “is in the best position to assess the assets and liabilities of the parties and determine what is ‘fair, just and equitable under all the circumstances.’” *Brewer*, 137 Wn.2d at 769. Here, the trial court’s decision on property and maintenance was well within its discretion and this court should affirm.

The wife complains that after a twenty-year marriage, she was left with “only the clothes on her back.” (App. Br. 25) But this complaint ignores the reality of the parties’ situation. By the time of trial, the parties’ economic situation was such that the trial court had to do the best that could be done under the circumstances. The parties had more debt than assets, and the trial court ordered the husband responsible for all of the community debt. Neither the wife nor the husband was left with anything of value from the marital estate. However, the wife was left in a better circumstance than the husband as she was not responsible for any of the community debt.

The wife complains that assets “were purposefully ignored and hidden by John.” (App. Br. 25) But the wife never presented any evidence of missing assets at trial, nor did she raise this issue to the trial court. RAP 2.5(a) (appellate court may not review any claim of error which was not raised in the trial court); ***Lindblad v. Boeing Co.***, 108 Wn. App. 198, 207, 31 P.3d 1 (2001) (declining to review issue, theory, argument, or claim of error not presented at the trial court level).

The wife complains that the trial court erred in characterizing the husband's inheritance from his grandmother as separate property, arguing that the inheritance was community property because the proceeds were received during the marriage. (See App. Br. 26) But separate property is defined as "property and pecuniary rights owned by a spouse before marriage and that acquired by him or her *afterwards* by gift, bequest, devise, descent, or inheritance." RCW 26.16.010 (emphasis added). The grandmother's home was part of her remainder estate and was sold after her death. (See RP 215) The wife does not dispute that the husband inherited one-half of the grandmother's remainder estate. (See App. Br. 26) Therefore, the trial court did not err in characterizing this inheritance as the husband's separate property. The trial court also did not abuse its discretion in awarding the husband this inheritance in its entirety. In light of the fact that the trial court made the husband wholly responsible for all of the community debt, awarding the husband his separate property was just and equitable. (See FF 2.10, CP 387)

The wife's chief complaint appears to be her claim that she should have been awarded the family residence (App. Br. 14, 45),

but it was undisputed that she could not afford the monthly mortgage payments. Nor could the wife refinance the home to obtain a smaller monthly payment. (FF 2.12, CP 388, *unchallenged*) As the trial court recognized, the wife's financial demands were "totally unrealistic." (FF 2.12, CP 388, *unchallenged*) Below, the wife demanded the family residence, child support of \$4,000, an undisclosed amount of spousal maintenance, and for an order requiring the husband to continue to pay the mortgage of \$3,100 per month. But as the trial court found, "just taking Ms. Hatch's [ ] two requests would total \$7,100 when Mr. Hatch only nets \$6,800." (FF 2.12, CP 388, *unchallenged*) The wife's demands were simply impossible. As the trial court found, the wife's financial requests "clearly exceeds Mr. Hatch's ability to pay. Ms. Hatch knew this very well. Regardless, her desire for revenge motivated her to seek unrealistic relief at trial." (FF 2.12, CP 388, *unchallenged*)

The trial court's decision to award the family residence to the husband, along with the accompanying debt, and his separate property inheritance to assist him in paying the community debt, while awarding the wife four years of spousal maintenance at

\$2,000 per month, plus child support of \$1,000 per month (even though the children will reside one-half of the time with the husband) was well within its discretion. This court should affirm.

**C. The Trial Court Did Not Err In Considering An Email Between The Wife And Her Partner When The Wife Did Not Object To Its Admission At Trial And There Was No Question Of Its Authenticity.**

The wife complains that the trial court abused its discretion in considering an email between her and Ms. Mastandrea that she alleges was obtained illegally. (App. Br. 30-33) The trial court referenced this email in its findings of fact when addressing the fact that the wife had unrealistic financial expectations, which the trial court believed was guided by Ms. Mastandrea. (See FF 2.12, CP 388) In this email Ms. Mastandrea stated that she knew how to “work[ ] the legal system” and had done so in other states. (Ex. 18) The wife did not object to the admission of this exhibit before trial or during trial. (See RP 6, 9-10) The husband’s intention to offer this email as an exhibit at trial was disclosed in his ER 904 statement, which was provided to the wife one month before trial. (CP 416-19) The wife did not object within fourteen days, and the email was “deemed authentic and admissible without testimony or further identification.” ER 904 (b) (See *also* CP 416) Further, the wife was

offered another opportunity to object to the admission of this particular email at the start of trial.<sup>7</sup> (RP 9) The wife conceded that she reviewed all of the exhibits being offered and had no objection to their admission. (RP 9-10) Finally, there is no question of authenticity, as neither the wife nor Ms. Mastandrea denied that the email was written by Ms. Mastandrea and sent to the wife. (See RP 116, 291-92)

The wife failed to preserve her challenge to the admission and consideration of this email and this court should decline to review this issue on appeal. Absent any indication in the record that appellant advanced this particular claim in any substantive fashion at trial, it cannot be considered on appeal. ***Marriage of Studebaker***, 36 Wn. App. 815, 818, 677 P.2d 789 (1984); *see also* RAP 2.5(a); ***Lindblad v. Boeing Co.***, 108 Wn. App. 198, 207, 31 P.3d 1 (2001). The purpose of this rule is to give the trial court an opportunity to correct alleged errors, thereby avoiding unnecessary

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<sup>7</sup> Although the appellant was pro se at trial, she is held to the same standard of an attorney, including being required to make objections to evidence that she challenges. ***Marriage of Wherley***, 34 Wn. App. 344, 349, 661 P.2d 155, *review denied*, 100 Wn.2d 1013 (1983) (“the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel-both are subject to the same procedural and substantive laws”).

appeals and retrials. *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 527, 20 P.3d 447, *rev. denied*, 145 Wn.2d 1004 (2001).

In any event, this email was not “illegally obtained,” as claimed by the wife. (App. Br. 30-33) The husband admitted that he obtained the email using keystroke software that he installed on the community property computer located in the family residence when he was still residing in the home. (RP 246) RCW 19.270.020(2), on which the appellant relies (App. Br. 30-33), provides that it is unlawful for a person without authorization from the owner of a computer to install software to “collect, through intentionally deceptive means, personally identifiable information through the use of keystroke-logging function.” But the husband was the owner of the computer and was authorized to install software on his own computer. Further, the software was not intended to collect “personally identifiable information” as defined by RCW 19.270.010(9), which includes names, physical address, email address, account numbers, or government-issued identification numbers. The husband did not violate RCW 19.270.020(2) by using keystroke software on a community property computer.

Finally, even if the trial court erred in considering the email between the wife and Ms. Mastandrea, any error was harmless. There is no evidence that the trial court relied on this email in designing its parenting plan, which was supported by substantial evidence, including the testimony of the guardian ad litem and psychologist. Nor is there any evidence that this email had any effect on the property distribution or spousal maintenance award. As earlier stated, in light of the particular economic circumstances of these parties, the trial court was limited in its choices in how to divide the property. (*supra* §III.B) Any error in the admission and consideration of this email is harmless unless “the reviewing court finds that within reasonable probabilities the outcome of the trial would have been different if the error had not occurred.” *Doe v. Corporation of President of Church of Jesus Christ of Latter-Day Saints*, 141 Wn. App. 407, 437, ¶¶ 59, 167 P.3d 1193 (2007), *rev. denied*, 164 Wn.2d 1009 (2008).

**D. This Court Has No Authority To Review The Appellant’s Challenge To Contempt Orders That Were Entered After Final Orders And For Which She Did Not File A Notice Of Appeal.**

In her brief, the wife appears to challenge contempt orders that were entered against her months after she filed her Notice of

Appeal. (App. Br. 35-37) RAP 5.1(f) provides that a party who seeks review of a trial decision entered after review has been accepted “must initiate a separate review of the decision by timely filing a notice of appeal.” The wife did not file a notice of appeal for these orders. Nor has the wife designated any of the pleadings or orders as part of the record on review. RAP 9.6(b) (the clerk’s papers shall include any written order or ruling not attached to the notice of appeal); ***Marriage of Wintermute***, 70 Wn. App. 741, 744, fn. 4, 855 P.2d 1186 (1993) (“We will not review any legal issues that lie outside the record on appeal”), *rev. denied*, 123 Wn.2d 1009 (1994). This court should reject her attempt to have this court review orders that she failed to timely challenge.

**E. This Court Should Award Attorney Fees To The Husband For Having To Respond To This Appeal.**

This court should award the husband attorney fees based on the wife’s intransigence in bringing this appeal. RAP 18.9 (appellate court may order sanctions or compensatory damages if appellant files a frivolous appeal). The wife’s challenge to the trial court’s fact-based discretionary decisions are without merit, and is largely based on disputed “facts” that are not supported by the record. The wife has failed to assign error to any of the findings of

fact which support the trial court's orders, nor does she substantively challenge those findings in her brief. The issues presented by the wife are so devoid of merit that there is no reasonable possibility of reversal and the appellant should be sanctioned for bringing this appeal. **Marriage of Healy**, 35 Wn. App. 402, 406, 667 P.2d 114, *rev. denied*, 100 Wn.2d 1023 (1983) (an appeal may be so devoid of merit to warrant the imposition of sanctions and an award of attorney fees).

The wife's decision to pursue this meritless appeal simply appears to be a continuation of what the trial court found was her motivation for "revenge" against the husband. (FF 2.12, CP 388) While the wife can litigate endlessly at little to no cost, the husband is forced to retain attorneys to defend the trial court's orders in the superior and appellate courts. In light of the fact that the husband is already entirely responsible for all of the parties' community debt, he should not be required to further impoverish himself out of the limited resources available to him when the wife's tactics have made litigation more difficult. **Marriage of Dalthorp**, 23 Wn. App. 904, 912-913, 598 P.2d 788 (1979).

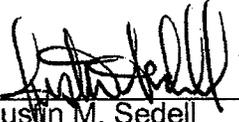
The husband should also be awarded attorney fees because the wife's brief failed to comply with the appellate rules. The wife largely fails to reference the record for any of the "factual" statements throughout her brief as required by RAP 10.3(a)(b), causing the husband's attorney fees to be increased by forcing him to search the record to check the accuracy of her claims. RAP 18.9 (party can be awarded sanctions if the other party's failure to comply with the rules harms the party); *see Lynn v. Labor Ready, Inc.*, 136 Wn. App. 295, 314, ¶ 45, 151 P.3d 201 (2006) (awarding attorney fees to respondent when appellant consistently misrepresented the record causing the respondent to "waste considerable time checking for their accuracy."). This court should award attorney fees to the husband.

#### IV. CONCLUSION

This court should affirm the trial court's decision in its entirety and award attorney fees to the respondent for having to respond to this appeal.

DATED this 28<sup>th</sup> day of January, 2011.

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 28, 2011, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Tracy J. Hatch 2223 227th St. SE, C-201 Bothell WA 98021	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Justin M. Sedell McKinley Irvin, PLLC 425 Pike Street, Suite 500 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

**DATED** at Seattle, Washington this 28th day of January, 2011.

  
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Tara D. Friesen