

66635.5

66635-5

NO 6635-5-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ADAM REED GROSSMAN,

APPELLANT

v.

JILL IRINA BORODIN,

RESPONDENT

**BRIEF OF RESPONDENT/MOTHER
RABBI JILL I. BORODIN**

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I. INTRODUCTION.

This is the second of three appeals filed by the Father, Adam Grossman, in less than 13 months. Case #1, 660535: The court terminated review on January 6, 2011 after Mr. Grossman failed to follow the court's rules and then ignored every warning. **Appendix A.** Case #2, 666355: Multiple orders have been entered putting Mr. Grossman on notice that this appeal will be dismissed for failure to follow the court rules. Mr. Grossman has only minimally complied. Case #3, 678302: filed on October 7, 2011. A motion to impose sanctions and/or dismiss for failure to file proof of service and pay the filing fee has been continued to December 16, 2011, after Mr. Grossman failed to appear or respond to the dismissal hearing on November 18, 2011.

The parties' dissolution was pending for approximately 18 months and was heavily litigated, including multiple pretrial hearings, plus a five day trial. The trial court properly entered final orders protecting the Mother and children, dividing the assets and debts of the parties and setting child support. There was undisputed evidence that the Father failed to comply with multiple court orders regarding financial matters and had engaged in domestic violence. The evidence supported each of the trial court's findings and rulings.

II. STATEMENT OF THE CASE

A. FACTUAL AND PROCEDURAL HISTORY AT TRIAL LEVEL

The Mother/Wife, Rabbi Jill I. Borodin, (Respondent herein; Petitioner at the trial level) and Father/Husband, Adam Grossman (Appellant herein; Respondent at trial) were married on 12/31/2002. They have twin daughters, Naomi and Alexandra (DOB: March 1 and 2, 2006 respectively). Rabbi Borodin filed for dissolution in April 15, 2009. CP 1-8. A Temporary Order for Protection was entered 7/27/09. CP 19-21. There were multiple hearings on temporary orders prior to trial. Ex 1a-k.

The Wife filed a second petition for order for protection on 7/27/2010 alleging new facts. CP 247-250; Ex 338

Notice for the temporary order was provided to the Husband and a contested hearing resulted in the entry of a Temporary Order for Protection. CP 241-45; Ex 1(i). The Wife's petition was granted on 8/31/11. CP 300-305.

During the parties' marriage, the Wife was at all times employed as a Rabbi. The Husband was self-employed in what was later revealed to be a Ponzi scheme funded primarily by the community. Ex. 3. Additionally, the Husband opened a number of straw-man shell companies through which community funds were laundered. Ex. 15(b), 19, 21(b), 22.

B. FACTUAL AND PROCEDURAL HISTORY AT APPELLATE LEVEL.

Similar to failures to comply with mandatory disclosures at the trial level, Mr. Grossman has failed to comply with RAP deadlines. There have been four motions to extend filing deadlines. He failed to meet the court imposed deadline of November 4 to file and serve his opening brief. Mr. Grossman's pattern of foot-dragging and failing to comply with rules has been consistent throughout litigation.

C. APPELLANT/GROSSMAN FAILED TO COMPLY WITH RAP BY PROVIDING COPIES OF VERBATIM REPORT OF PROCEEDINGS. NOTICE AND REQUESTS FOR COMPLIANCE WERE IGNORED.

RAP 9.5(a)(1) requires that a party filing a brief must promptly forward a copy of the verbatim report of proceedings with a copy of the brief to the party with the right to file the next brief. Mr. Grossman purports to quote to the verbatim report of proceedings in his opening brief, however, he fails to provide any citation. Additionally, Mr. Grossman failed to provide a copy of the verbatim report of proceedings which eliminates Rabbi Borodin's ability to review or cite to the verbatim report of proceedings.

D. APPELLANT/GROSSMAN FAILED TO PERFECT RECORD ON APPEAL BY DESIGNATING CORRECT RECORD.

Mr. Grossman's case is not properly presented on appeal. RAP 9.6(b)(1), (3) requires that the clerk's papers include only pleadings and exhibits needed to review the issues presented to the appellate court. Mr. Grossman has failed to comply with this requirement. Mr. Grossman designated substantial clerk's papers which were not before the trial court and, additionally, failed to include trial exhibits, which provide essential information for review. Mr. Grossman failed to provide any citations to the record within his opening brief.

E. APPELLANT/GROSSMAN'S STATEMENT OF FACTS AND ARGUMENT SECTION FAIL TO COMFORM WITH RAP 10.3. MR. GROSSMAN HAS SABOTAGED MOTHER'S ABILITY TO CITE TO THE RECORD BY REFUSING TO PROVIDE VERBATIM REPORT OF PROCEEDINGS.

RAP 10.3(a)(5) requires that a briefing party provide a "fair statement of the facts and procedure relevant to the issues presented for review, without argument. Reference to the record must be included for each factual statement." Mr. Grossman's opening brief fails to cite to the record. Additionally, Mr. Grossman has sabotaged Rabbi Borodin's ability to cite to the Verbatim Report of Proceedings by refusing to provide a copy of the Report of Proceedings. Mr. Grossman was

requested to provide the Verbatim Report of Proceedings on November 23, but refused. **Appendix B.**

As a remedy, the Appellate Court should disregard any quotes Mr. Grossman states are from the verbatim report of proceedings.

III. LEGAL ARGUMENT.

A. ARGUMENT NOT PROPERLY CITED OR BRIEFED SHOULD BE STRICKEN BY COURT.

RAP 10.3(a)(4),(5) and RAP 10.3(b) require that references to the relevant parts of the record must be included for each factual statement contained in the sections of the parties' briefs devoted to the statement of the case and to argument. RAP 10.4(f) provides that references to the record should designate the page and part of the record which supports each factual statement contained in the statement of the case and in the argument. Mr. Grossman failed to provide citations to any portion of the Verbatim Report of Proceedings, Clerk's Papers or Trial Exhibits. Information provided in Mr. Grossman's opening brief is inconsistent with trial evidence.

On appeal from a judgment of a trial court, appellant is obligated to demonstrate why specific findings of the trial court are not supported by the evidence and to cite to the record in support of that argument. *In re Estate of Palmer*, 145 Wash.App. 249 (2008). The purpose of rules

governing contents of appellate briefs is to enable the court and opposing counsel to efficiently and expeditiously review the accuracy of the factual statements made in the briefs and efficiently and expeditiously review the relevant legal authority. *Litho Color, Inc. v. Pacific Employers Ins. Co.* 98 Wash.App. 286 (1999) (Citing *Hurlbert v. Gorden*, 64 Wash.App. 386, 399 (1992)). Court of Appeals does not need to consider arguments that a party has not developed in the briefs and for which the party has cited no authority. *State v. Bello*, 142 Wash.App. 930 (2008), review denied 164 Wash.2d 1015.

In this case, Mr. Grossman's opening brief fails to cite to the record and there are only sparse legal references. Many of the cases cited are incorrect: e.g. "Parentage ICAMA. 154 Wn.2d at 64, 66" for example, is not a real case.

Mr. Grossman has retyped, what appears to be, transcript excerpts, however, there is no reference to where the content may be found in the Verbatim Report of Proceedings. There is an overall lack of clarity in the record provided by Mr. Grossman which renders the issues unreviewable. See *Starzewski v. Unigard Ins. Group*, 61 Wash.App. 267, 276 (1991) (party seeking review has the burden of perfecting the record so that the appellate court has before it all of the materials relevant to the assignments

of error); *Bohn v. Cody*, 119 Wash.2d 357, 368 (1992) (an argument will not be considered if it is inadequately briefed).

It would not serve the ends of justice to reject Mr. Grossman's opening brief and require a "redo." Not only has Rabbi Borodin incurred substantial costs associated with this responsive brief, but Mr. Grossman would be rewarded for his abusive use of the legal system.

B. MR. GROSSMAN'S ASSERTIONS THAT THERE WERE PROCEDURAL ERRORS ARE WITHOUT MERIT.

- 1. Any errors regarding the admission of witness testimony were beneficial to Mr. Grossman, not Rabbi Borodin. (Errors #4, 5, 21, 30, 32, 38 and 39).**

Pursuant to ER 802, "hearsay is not admissible." ER 801(a)-(c), defines hearsay as an out of court statement made for the truth of the matter. The Order on Pretrial Conference dated 10/18/10 set trial at "2-3 days" and limited both sides "to calling max of 8 witnesses [including] experts & parties themselves." CP 548. Neither party objected to this order. The Pretrial Order further required that if a "party wants to use depositions...at trial in place of live testimony, the party shall give every other party a list of the excerpts to be offered." CP 549. Neither party notified the other that excerpts of depositions would replace live testimony.

a. No depositions were offered at trial. Mr.

Grossman's assertion that error was committed by failing to admit depositions is complete fabrication. Mr. Grossman fails to cite a witness or deposition offered or admission which was refused.

b. Admission of "non-testimonial" evidence is proper.

This allegation is unsupported by any reference to the record. Non-testimonial evidence, such as documents, is admissible under multiple evidentiary rules.

c. Limitation on Witnesses Examination. Seven

witnesses testified on behalf of Mr. Grossman. CP 644. Two witnesses testified on behalf of Rabbi Borodin. CP 644. Over the Wife's objection, the court allowed the testimony of Jason Ruiz who was not disclosed until the commencement of trial. At the Husband's request, an additional day of trial was added.

d. Allegation of "suppression of evidence" regarding

the Glennview property. Obtaining financial discovery regarding Mr.

Grossman's multiple Ponzi scheme(s) was impossible. Throughout the dissolution proceedings, multiple orders were entered noting Mr.

Grossman's failure to comply with financial discovery requirements. CP 220, 224, Ex 1(a), 1(f) and 1(g). Even at trial, Mr. Grossman was unable

to provide testimony regarding tracing of funds.¹ Ex. 349. The court found that “although this property was purchased after the date of separation, the Respondent used \$135,000 of community funds from the Terrington Davies LLC account to acquire this property. Further, exhibit 351 which purports to be a Deed of Trust on the Glennview Drive property is signed only by the Respondent himself calling into question the authenticity of this document.” CP 981.

Mr. Grossman has provided no specific allegations or citations to the record evidencing the court’s failure “to allow Appellant to provide evidence in Appellant’s defense.” Evidence previously cited contradicts Mr. Grossman’s assertions.

2. Court had jurisdiction over characterization of assets and property division. There was no stay in effect in bankruptcy proceeding. (Errors #6, 9, 29, 38)

The trial court had authority to proceed to divide the community assets and debts pursuant to RCW 26.09.080. Mr. Grossman has provided no evidence to support his assertion that the trial court had no authority to proceed. Mr. Grossman filed bankruptcy three times within a one-year

¹ Mr. Grossman’s Exhibit 349 contains the following statements: “...This is a little more complicated and could use more tracing... I think I took \$55K from the LOC... Or, maybe the other way around. I will look this up... \$10,000 from kids money (I think)... Reimbursement of expenses or income depending on end-of-year accounting. I think there are enough expenses to make this all expenses.”

period. Ex. 26a-f. There was no automatic stay. Subsequent orders have been entered in bankruptcy affirming the trial court's decision.

The Decree effectuated an equal division of community assets plus awarded the Husband all of his separate property. CP 676-77. The Decree recites reliance upon multiple exhibits admitted at trial in dividing assets and debts equitably. CP 665, 668-69.

The court's duty is to characterize an asset and/or debt of the parties prior to division. It was not error to characterize the family home (6821 39th Ave NE) as community property where the home was purchased during the marriage and substantial proceeds from refinances were funneled into the Husband's Ponzi scheme businesses.

3. No evidence or finding that documents were late. (Error #35)

All documents were timely served. There was no evidence that documents were produced late or that Mr. Grossman was prejudiced at the commencement of trial.

4. "Obstruction of Justice" alleged errors are frivolous. (Errors #36, 37)

Mr. Grossman fails to cite depositions he wished to occur, nor does he cite to any witness offered for testimony who were denied. Neither does Mr. Grossman cite to any erroneous finding by the court that counsel for either party engaged in "unlawful" conduct.

5. Disgorgement of attorney's fees was not before King County Superior Court. (Error #33)

There is no legal merit to this assignment of error. Mr. Grossman cites no evidence to support his allegation. The motion referred to occurred in Federal Court, not this dissolution action. Mr. Grossman obtained his undergraduate degree from MIT and an MBA from the prestigious Ivy League Wharton School at the University of Pennsylvania. Mr. Grossman fails to cite the basis for his assertion that he could not proceed pro-se.

C. COURT'S FINDING OF DOMESTIC VIOLENCE PERPETRATED BY THE FATHER AND CONSEQUENTIAL LIMITATIONS IN PARENTING PLAN SHOULD BE AFFIRMED

1. Mr. Grossman perpetrated domestic violence against the Wife and posed a threat of harm to the children. RCW 26.09.191 mandates restrictions in the Parenting Plan where domestic violence has been found pursuant to 26.50. (Errors # 1, 2, 3, 7, 11, 12, 13, 14, 16, 17, 20, 23, 34 and 40)

The statute is clear that once domestic violence has been found to have occurred, the court has authority to enter restraints and is mandated to place limitations on the perpetrator in the parenting plan.

a. Finding of domestic violence in 8/31/10 DVPO was final order pursuant to RCW 26.50. After a full hearing on the merits, the court found that Mr. Grossman committed domestic violence as defined in

26.50 and presented a credible threat to the Mother and children. CP 300-305; Ex. 1k and 338.

b. Based on the finding of domestic violence in August, 2010 and evidence at trial, restraints, including limited residential time and supervision were mandated in parenting plan due to mandatory restrictions set forth in RCW 26.09.191 In conjunction with the above cited findings of domestic violence, the trial court further entered findings in the Parenting Plan that Mr. Grossman had a history of domestic violence and engaged in the abusive use of conflict which created a danger of serious damage to the children's psychological development. CP 632.

“The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court.” The Parenting Evaluator's report stated Mr. Grossman's conduct was “a significant pattern of relentless, fixated, exacting, and controlling behavior by Adam toward Jill that is frequent, intense and debilitating.” CP 1073, Ex 201, p. 32 At trial, the Parenting Evaluator expressed greater concern regarding Mr. Grossman's mental health and risks to the children which led to the modification of her recommendations to limit Mr. Grossman's residential time.

c. There is no provision in the parenting plan regarding e-mail access between the Father and children. Paragraph

3.13.3 of the parenting plan limits communication between the parents to e-mail. This is appropriate given the Father's history of domestic violence and intransigence. It provides for reasonable communication, minimal delay and a record of communication. The Father did not request e-mail correspondence with the children.

d. Parenting Plan does not contain contradictory language regarding Father's contact with children. This claim has no basis in fact. Mr. Grossman's contact with his children has nothing to do with contempt proceedings set forth in RCW 26.09.160. Mr. Grossman cites no provision in 26.09.160 which was applied to the parties' parenting plan. The court is mandated to limit Mr. Grossman's residential time pursuant to RCW 26.09.191.

e. Court did not err in entering a 10-year restraining order in lieu of domestic violence order for protection. The Parenting Evaluator testified that the Father engaged in "a significant pattern of relentless, fixated, exacting, and controlling behavior by Adam toward Jill that is frequent, intense and debilitating." CP 1073; Ex 201, p. 32. A full Domestic Violence Order for Protection was entered on August 31, 2010 which included specific findings that Mr. Grossman engaged in domestic violence and presented a credible threat of harm to the Mother and children. CP 300-305; Ex. 1k and 338. The Court further implemented

specific protective measures in order to limit Mr. Grossman's ongoing harm as statutorily mandated.

f. Sole decision-making mandated by RCW

26.09.191(1). Sole decision-making is mandated where it is found that a parent has engaged in acts of domestic violence or the abusive use of conflict. In this case, there was substantial evidence, thus the court had no discretion on this issue.

2. No Evidence that Mother engaged in domestic violence. (Error #19)

Mr. Grossman fails to cite to any evidence to support this assertion.

3. "Res judicata" and/or "collateral estoppel" relating to restraining orders or the residential schedule adopted by the court do not apply. (Error #31).

Mr. Grossman cites no facts or evidence to support this error. The trial court, in determining a final parenting plan, is required to consider the factors set forth in RCW 26.09.184 and 26.09.187. Both statutes specifically reference limitations to the court's authority if there are mandatory restrictions under RCW 26.09.191. RCW 26.09.191(5) states that, "[i]n entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan."

The court entered the August 31, 2010 DVPO based on new facts which had arisen since the prior petition. CP 247-250, Ex 51, 338.

4. The court's findings in the Parenting Plan mandate limitations on the Father's residential time. A trial court's decision on the provisions of a parenting plan are reviewed for abuse of discretion. *In re the Marriage of Littlefield*, 133 Wn.2d. 39, 46 (1997). The trial court, in determining an appropriate residential schedule, is required to consider the factors set forth in RCW 26.09.184 and 26.09.187, both of which include legislative mandatory restrictions of RCW 26.09.191.

In this case, the court's final Parenting Plan differed from the Temporary Parenting Plan based on the findings that the Father engaged in a pattern of domestic violence against the Mother and children. CP 631-32. The court additionally found that Mr. Grossman had engaged in the abusive use of conflict which created a danger of serious risk to the children's emotional development. CP 632.

Pursuant to RCW 26.09.191(m)(i)

The limitations imposed by the court...shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the

parent or completion of relevant counseling or treatment.

This provision of the statute allows the court to consider not only the children's safety with Mr. Grossman, but also "the safety of the parent who may be at risk...", in this case, the Mother. Not only do the statutes allow limited and supervised visits, plus allow for the requirement of State Certified Domestic Violence Treatment and DV Dads. The court has the authority to designate an appropriate treatment program.

Evidence at trial to support the entry of protective measures on behalf of the Mother and children includes, but is not limited to: Testimony of the Mother, Karin Ballantyne, Noah Humphries, Kelly Shanks, CP 1073, Ex 201, p. 32, 16a, 16b, 16c, 38, 66, 201, 203, 217, 219-221, and 223.

D. SUBSTANTIAL EVIDENCE SUPPORTED THE TRIAL COURT'S CHARACTERIZATION AND DISTRIBUTION OF ASSETS AND DEBTS.

Mr. Grossman has failed to identify any specific error associated with the division of assets and/or debts. Nor has Mr. Grossman cited evidence which undermines the trial court's ruling. The only evidence as to the value of the family home, presented by the Wife, was that the fair market value was \$480,000 but that the two mortgages exceeded \$605,000. Ex 3b, p. 5-8, 29 and 30. Additionally, the Wife provided

testimony and evidentiary support for the values associated with all other assets and debts. For example, the Wife's expert, Steve Kessler, testified as to the value of her retirement account, plus relied on Ex 9, and 69-70.

1. Characterization of property. The court must first determine the nature and extent of the community and separate property. *RCW 26.09.080(1)*. The characterization of property is a question of law; review is de novo. *In re Marriage of Marzetta*, 129 Wash.App. 607, 616 (2005), *overruled on other grounds by, McCausland v. McCausland*, 159 Wash.2d 607 (2007). The presumption established by 26.16.010 is that property acquired during marriage is community property. Said presumption can be rebutted by clear and convincing evidence of mutual intent to change the character. *In re Marriage of Chumbly*, 150 Wash.2d 1, 5 (2003). "No presumption arises from the names on a deed or title." *In re Estate of Borghi*, 167 Wash.2d. 480, 490 (2009).

The characterization of the family home as community property was within the trial court's discretion. The property was purchased during the marriage using community funds. Ex. 3b, p. 6-8. A large portion of the second mortgage was funneled out of the community into the community businesses, Terrington Davies, Tanager Fund and Ptarmigan. Ex. 39, 349. Although the Husband signed a Quit Claim Deed (Ex 55), neither party provided testimony that would support that the parties

intended to create separate property. There was testimony that proceeds from the second mortgage in the amount of \$101,617 was transferred to businesses awarded to the Husband. Ex 3b, p. 30, 349 and 351, tab F, p. 36-37.

Mr. Grossman has failed to identify any evidence of mutual intent to change the characterization of the property or debt associated with the property. Credibility determinations are a question of fact and will not be revisited on appeal. *State v. Hernandez*, 85 Wash.App. 672, 675 (1997).

2. Distribution of property. The court has broad discretion when distributing property in a dissolution per 26.09.080. A court abuses its discretion when it makes a decision on untenable grounds or for untenable reasons. *In re Marriage of Littlefield*, 133 Wash.2d 39, 46-47 (1997). A court's decision "is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *Id.* at 47.

The court must consider the value of each asset in order to make an equitable distribution of the marital estate. 2 FAMILY LAW DESKBOOK, § 31.2, at 31-3. It is within the court's discretion to assign value to property within the scope of the evidence. *In re Marriage of Soriano*, 31 Wash.App. 432, 435 (1982). The court has broad discretion

with regard to the weight to give to a property owner's testimony as to the value of his own property. *Worthington v. Worthington*, 73 Wash.2d 750, 763 (1968).

3. The trial court's finding that the Wife was in need of spousal maintenance was supported by substantial evidence. Its effect was irrelevant because spousal maintenance was not ordered. (Error #22)

Rabbi Borodin's testimony supported by Exhibits 2, 4, 6 and 7, established a need for spousal maintenance in order to provide for the household's basic needs. The Rabbi's financial situation has become even more dire post-dissolution as Mr. Grossman sold the Montcrest home awarded to Rabbi Borodin and kept the proceeds. CP 963, line 79, 964, lines 1, 15. There have been multiple post-trial hearings attempting to address and remedy Mr. Grossman's sale of the home awarded to his ex-Wife.

4. Court adopted Father's assertions of income (Error #25).

The Court adopted the Father's income for child support purposes as \$3,947.37 per month. The order stated, that "the income of the obligor was obtained from the financial declaration that he signed on November 11, 2010."

5. Assertion that court ordered debt owed to third party to be collected by DCS is unsupported by the record. (Error #26)

Mr. Grossman fails to provide any hint as to what this error refers to. There is no citation to the record, clerk's paper or any exhibit.

6. There is no evidence that the Wife was anything other than completely candid in all aspects of disclosures and discovery. (Error #27)

In an ongoing pattern, Mr. Grossman fails to provide any evidence in the record to support his assertions that the court failed to meet its duty to enter orders based on evidence before it at trial. The court found the Wife credible in all disclosures of income, assets and debts. Mr. Grossman fails to cite any authority in law or the record to support his assertion that the trial court was preempted by his third bankruptcy filing.

E. APPELLANT GROSSMAN SHOULD BE SANCTIONED PURSUANT TO RAP 18.9.

Mr. Grossman's appeal is frivolous. He has filed his appeal in bad faith and for the purposes of delay. Pursuant to RAP 18.9(a), the appellate court... may order a party...who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. In determining whether an appeal is brought for delay, Court of Appeals inquires whether, when considering the record as a whole, the appeal is

frivolous, i.e., whether it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal. *Carrillo v. City of Ocean Shores* 122 Wash.App. 592, 619 (2004).

Similar to Mr. Grossman's other appeals, he has failed to comply with court rules. Additionally, the evidence does not support any of Mr. Grossman's assertions. Mr. Grossman's appeal is frivolous.

F. ATTORNEY FEE AWARD AT TRIAL LEVEL SHOULD BE AFFIRMED.

A trial court has broad discretion in its decisions regarding whether to award attorney fees. "The party challenging the award must show that the court used its discretion in an untenable or manifestly unreasonable manner." *Mattson v. Mattson*, 95 Wn.App. 592, 604 (1999). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on the incorrect standard or the facts to not meet the requirements of the correct standard." *Marriage of Littlefield*, 133 Wn.2d 39, 46-47 (1997). The record supports the court's finding of intransigence. There was no abuse of discretion.

1. Court's findings of intransigence are supported by substantial evidence. (Error #8)

The Temporary Order entered 9/10/09, found, "the father did not comply with local rules re: submission of financial documents; the court therefore makes this order without benefit of this information. Additional time to obtain/submit financial docs [sic] was not requested." CP 220. Ex 1(a). On 4/9/2010 the court entered an order striking Mr. Grossman's motion for financial relief stating, "Husband is prohibited from refiling until he has fully and completely complied w/LFLR 10." CP 224; Ex 1(f). The court additionally entered an order compelling discovery. Ex 1(g).

A substantial theme at trial was Mr. Grossman's failure to provide documentation as to his income or his business. His multiple businesses were nothing more than shell games with which he would launder funds from the community into his separate coffers. Ex 3(a) and 3(b) carefully and concisely documents values for each community asset and documents substantial predistributions to the Husband.

2. Award of attorney's fees was within court's discretion based on a finding of intransigence. (Error #10, 24, 28, 38).

Mr. Grossman was repeatedly cited throughout the dissolution proceedings for failing to provide important financial documentation. The court was specific in its Order Compelling Discovery (Sub 147, not designated by Mr. Grossman on appeal) as to what documents were

required. The court ruled on the Wife's motion in limine at the commencement of trial that Mr. Grossman would be precluded from presenting any evidence at trial that he did not produce in discovery. Additionally, the trial court properly precluded Mr. Grossman from providing evidence at trial that he failed to disclose in the discovery process.

There was no finding that Mr. Grossman was entitled to attorney's fees based on 26.09.140. To the extent that Mr. Grossman did have a need for attorney's fees, the court found that the Wife was the one in need of spousal maintenance. Additionally, it would be inappropriate to award fees where Mr. Grossman was engaging in a pattern of intransigence. Mr. Grossman's intransigence reached new levels post-trial when he intentionally sold the home awarded to his ex-wife and pocketed the funds. CP 963, line 79, 964, lines 1, 15.

G. RABBI BORODIN SHOULD BE AWARDED HER FEES ON APPEAL, UNDER RAP 18.1, 18.9.

Rabbi Borodin should be awarded attorney's fees for responding to a frivolous appeal. Mr. Grossman provides no authority for reversal based on existing law, nor does he make a rational, good-faith argument for modification of existing law. See *Delany v. Canning*, 84 Wash.App. 498, 510 (1997). See also, *In re Marriage of Healy*, 35 Wash.App. 401, 406

(1983) (an appeal may be so devoid of merit to warrant imposition of sanctions and award of attorney fees). An appeal is frivolous if it presents no debatable issues upon which reasonable minds could differ and there is no possibility of reversal. Mr. Grossman's arguments are wholly frivolous and raises no debatable issues. *In re Marriage of Schumacher*, 100 Wash.App. 208, 217 (2000).

Rabbi Borodin also requests attorney fees for Mr. Grossman's intransigence and under RAP 18.9 for Mr. Grossman's failure to provide this court with all relevant portions of the record, including the verbatim report of proceedings.

On any of the above-offered bases, Rabbi Borodin requests reasonable attorney's fees and expenses in this case.

V. CONCLUSION

The rulings of the trial court should be affirmed. The court should strike Mr. Grossman's opening brief, dismiss his appeal and award Rabbi Borodin attorney's fees on appeal.

RESPECTFULLY SUBMITTED this 11th day of December, 2011.



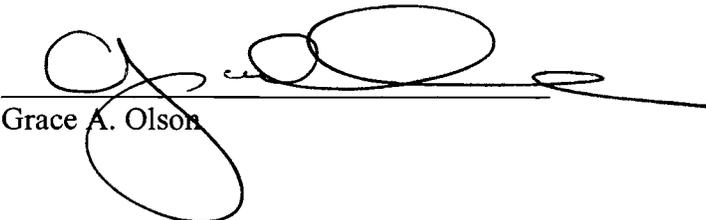
Karma L. Zaika, WSBA# 31037
Attorney for Respondent/Jill I. Borodin

CERTIFICATE OF SERVICE

I hereby certify that on 12/7/2011 the original of the foregoing document was sent to be filed by ABC Legal Messengers with the Court of Appeals, Division I; and that copies were served as follows:

Appellant via e-mail and U.S. Mail

Mr. Adam R. Grossman
5766 27th Ave NE
Seattle, WA 98105
arg@adamreedgrosman.com



Grace A. Olson

APPENDIX A

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

In re the Marriage of:)	
)	
JILL I. BORODIN,)	No. 66053-5-1
)	
Respondent,)	MANDATE
)	
v.)	King County
)	
ADAM REED GROSSMAN,)	Superior Court No. 09-3-02955-9.SEA
)	
Appellant.)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the ruling entered on January 6, 2011 became the decision terminating review in the above case on February 11, 2011. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

- c: Adam Reed Grossman
- Jennie Rebecca Laird - VIA E-MAIL
- Karma L. Zaike - VIA E-MAIL



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 11th day of February, 2011.

A handwritten signature in black ink, appearing to read "Richard D. Johnson".

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

January 10, 2011

VIA E-MAIL

Jennie Rebecca Laird
Karma L. Zaika
11300 Roosevelt Way NE Ste 300
Seattle, WA, 98125-6228

VIA US MAIL

Adam Reed Grossman
5766 27th Avenue N.E.
Seattle, WA 98105

CASE #: 66053-5-1

Jill I. Borodin, Respondent v. Adam Reed Grossman, Appellant

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on January 6, 2011, regarding failure to provide service on the notice of appeal :

"As the conditions of the December 14, 2010 commissioner's ruling have not been met, the appeal is accordingly dismissed."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

emp

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
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December 15, 2010

VIA E-MAIL

VIA US MAIL

Jennie Rebecca Laird
Karma L. Zaike
11300 Roosevelt Way NE Ste 300
Seattle, WA, 98125-6228

Adam Reed Grossman
5766 27th Avenue N.E.
Seattle, WA 98105

CASE #: 66053-5-I
Jill I. Borodin, Respondent v. Adam Reed Grossman, Appellant

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on December 14, 2010, regarding court's motion for failure to provide service on the notice of appeal:

"For the second time appellant failed to appear or respond to the court's motion. Review is dismissed, unless proof of service of the notice of appeal is filed by December 30, 2010."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

November 19, 2010

VIA E-MAIL

Jennie Rebecca Laird
Karma L. Zaike
11300 Roosevelt Way NE Ste 300
Seattle, WA, 98125-6228

VIA US MAIL

Adam Reed Grossman
5766 27th Avenue N.E.
Seattle, WA 98105

CASE #: 66053-5-I

Jill I. Borodin, Respondent v. Adam Reed Grossman, Appellant

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on November 17, 2010, regarding court's motion for failure to provide service on the notice of appeal :

"Proof of service of the notice of appeal remains overdue.
The court's motion to impose sanctions and/or dismiss the
appeal is continued to December 10, 2010 at 10:30 a.m."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

emp

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

October 26, 2010

VIA E-MAIL

VIA US MAIL

Jennie Rebecca Laird
Karma L. Zaike
11300 Roosevelt Way NE Ste 300
Seattle, WA, 98125-6228

Adam Reed Grossman
5766 27th Avenue N.E.
Seattle, WA 98105

CASE #: 66053-5-I
Jill I. Borodin, Respondent v. Adam Reed Grossman, Appellant

Counsel:

The records before the Court indicate that proof of service of the notice of appeal is not of record as required by RAP 5.4(b).

If the proof of service of the notice of appeal is not filed within 10 days, a court's motion to dismiss and/or impose sanctions in accordance with RAP 18.9 is set for Friday, November 12, 2010, at 10:30 a.m. The Court's motion will be stricken if the proof of service of the notice of appeal or a motion for extension of time is filed on or before November 4, 2010.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

APPENDIX B

Karma Zaike

Subject: FW: Appeal: Verbatim report of proceedings and trial exhibits

From: Karma Zaike
Sent: Wednesday, November 23, 2011 2:29 PM
To: 'Adam R. Grossman'
Cc: Grace Olson
Subject: Appeal: Verbatim report of proceedings and trial exhibits

Mr. Grossman,

Court rules require that you provide a copy of the Verbatim Report of Proceedings together with your brief. Please immediately provide my office with the full Verbatim Report of Proceedings.

Additionally, it does not appear from the Designation of Clerk's papers that you provided any of the trial exhibits to the Court of Appeals as required by RAP 7.6 and 9.7.

Please remedy these deficiencies immediately.

Regards,
Karma Zaike