

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE APPEALS COURT OF WASHINGTON STATE
DIVISION I

CASE NO. 67353-0-1
ANDREW D. MACHLEID

APPELLANT

V.

WENDY M. MACHLEID

RESPONDENT

~~RECEIVED
COURT OF APPEALS
DIVISION ONE~~

~~JAN 24 9 19~~

APPELLANT'S BRIEF

Andrew D. Machleid
The Highlands
150 NE 95th Street, Unit #106
Seattle, WA 98115
Office: (425) 722-7617
Cell: (206) 979-3863
machleid@gmail.com

~~RECEIVED
COURT OF APPEALS
DIVISION ONE~~

~~JAN 25 2012~~

1
2
3 **Table of Contents**

4 I. ISSUES ON APPEAL3
5 A. Did the trial court manifestly abuse its discretion when awarding custody of the
6 children to the Respondent?3
7 B. Did the trial court manifestly abuse its discretion by ignoring the patterns of abuse of
8 the Respondent?3
9 C. Did the Father assault the Respondent in April of 2010?3
10 1. Is there evidence that an assault had occurred?3
11 2. Does the Father have a right to defend himself under RCW 9A.16.110 (1)?3
12 3. Even if the Respondent’s false claims are given merit by the courts, do they
13 constitute domestic violence under RCW 26.50.010(1)?3
14 D. Did the trial court manifestly abuse its discretion in the division of assets and
15 liabilities in this case? Was the financial distribution of the marital community fair and just
16 given the career progression of the Respondent and the Respondent’s demonstrated earning
17 power?3
18 E. Has the Respondent received any non-divisible benefit at the expense of the marital
19 community? Is it a manifest abuse of discretion to allow the Respondent the ability to deplete
20 the community assets during the course of the marriage without making the parties whole? ..3
21 F. Did the trial court restrict the Father from calling witnesses at trial? Did the lack of
22 witnesses prevent the Father from impeaching testing and offering testimony that would be
23 beneficial to an unbiased fact-finder or was it harmless error?.....3
24 II. SUMMARY BRIEFING OF THE CASE3
25 III. ARGUMENT & AUTHORITY10
A. The trial court manifestly abused by ignoring RCW 26.09.187 (3) ignoring factual
evidence and coming to baseless and meritless conclusions. The Father’s role as PRIMARY
AND SOLE caregiver of the children is undisputed and should be restored immediately to
prevent further harm to the children.10
B. The Respondent has repeatedly and consistently violated the law and each of the
below offenses constitute an attempt to physically harm, harass and or prevent the Father
from having and maintaining a relationship with his children which under RCW 26.09.191
(3) (a) and (d) is an abusive use of conflict. The trial court has ignored the abusive pattern
demonstrated by the Respondent.....14
C. The events specifically regarding the April 4th, 2010 constitute libelous and slanderous
claims that are nothing more than the only (emphasis added) legal strategy for the

1 Respondent. Even if the allegations were true there is no basis for limiting the Father's
2 access to his children under RCW 29.09.191(3). The lower courts abused their discretion and
3 made an egregious error in judgment when disallowing the Father to call the police officer to
4 testify in this case.16

5 D. The trial court manifestly abused its discretion in the division of property by failing to
6 make a just and equitable distribution of the property and liabilities.18

7 **I. ISSUES ON APPEAL**

8 **A. Did the trial court manifestly abuse its discretion when awarding custody of
9 the children to the Respondent?**

10 **B. Did the trial court manifestly abuse its discretion by ignoring the patterns
11 of abuse of the Respondent?**

12 **C. Did the Father assault the Respondent in April of 2010?**

13 **1. Is there evidence that an assault had occurred?**

14 **2. Does the Father have a right to defend himself under RCW
15 9A.16.110 (1)?**

16 **3. Even if the Respondent's false claims are given merit by the courts,
17 do they constitute domestic violence under RCW 26.50.010(1)?**

18 **D. Did the trial court manifestly abuse its discretion in the division of assets
19 and liabilities in this case? Was the financial distribution of the marital
20 community fair and just given the career progression of the Respondent
21 and the Respondent's demonstrated earning power?**

22 **E. Has the Respondent received any non-divisible benefit at the expense of the
23 marital community? Is it a manifest abuse of discretion to allow the
24 Respondent the ability to deplete the community assets during the course of
25 the marriage without making the parties whole?**

**F. Did the trial court restrict the Father from calling witnesses at trial? Did
the lack of witnesses prevent the Father from impeaching testing and
offering testimony that would be beneficial to an unbiased fact-finder or
was it harmless error?**

II. SUMMARY BRIEFING OF THE CASE

1 Andrew D. Machleid (Father) met Wendy M. Christie (Respondent) from a mutual
2 friend in the early 2000's (CP...273). The Father knew that the Respondent had a violent past,
3 was involved with drug use and drug trafficking had previously been married and had dropped
4 out of college after one quarter at Portland State University with no aspiration or desire to
5 continue her education (id.) The Father also knew that the Respondent had gained employment
6 and advancement strictly because of her association and relationships with and not because of
7 her qualifications (id.). Despite these red flags the Father, who fell in love with the Respondent,
8 asked her to marry him (id.). The Father had a clear plan that he communicated to the
9 Respondent about starting a family, ensuring that they would be able to provide for the
10 children, investing for both the parties and the children, and most importantly, giving their
11 future children an opportunity for an education, success and happiness in their lives (id).

14 In September of 2002, the parties were married (CP...275). During that time the parties
15 set out to purchase raw land in Issaquah Washington (id.). It was at this time when they jointly
16 tried to purchase the raw land that the Father learned that the Respondent was hiding assets and
17 had previously declared bankruptcy (id.). The Father, having the experience and necessary
18 credit, obtained a loan to purchase the raw land (id.). Despite these continued red flags the
19 Father was not to be deterred to start a family and construct the families dream home (id.).

21 The Father also encouraged investing for retirement and the parties agreed that a portion
22 of their paycheck would max out their IRA and 401K savings (id.). The Father then started to
23 manage the IRA and 401K accounts, trading in and out of those accounts, leveraging them
24
25

1 when appropriate and managing the family's retirement assets (id.). The Father has continued
2 to perform this function throughout the marriage (id.).
3

4 The Father also started to contact builders to construct their home, of which the costs
5 estimates received from general contractors were around one million to complete the home as
6 built (id.). The Parties both agreed that the Father would go ahead and construct the home,
7 saving the contractor mark-up and getting additional savings for the labor that he performed
8 himself (CP...275).

9 In early 2003 the Father and the Respondent found out that the Respondent was infertile
10 (id.). Through the Father's employer benefits, the parties were able to access expensive
11 treatment to obtain a pregnancy through a surrogate donor (id.). In February of 2004 their first
12 child (MMM) was born (id.). The parties found a day care provider for the first born child in
13 Issaquah Washington (id.).
14

15 During the summer of 2004 the Father started on the construction of the house
16 (CP...275-278). The home is approximately fifty-five hundred square foot, 5 bedroom, and 5
17 bathroom home on approximately 1.5 acres located on the west face of Squak Mountain in
18 Issaquah Washington.¹ The Father worked tirelessly to construct the home, working late into
19 the evenings and during lunch breaks during the day to make sure that the house was
20 constructed on time and on budget (id.). The Father managed every aspect of the project,
21 including but not limited to: financing, budgeting, hiring and firing subcontractors, contract
22 negotiation, scheduling, review and supervision (id.). The home was completed in January of
23

24 _____
25 ¹ The Father incorporates and references the plans for the home he built in Issaquah Washington as Father's Trial
Brief, Exhibit B. (CP...269-280)

1 2006 (id.). The Father constructed the home by himself. Some, but not all, of the construction
2 that the Father performed was to install cabinetry, hung sheet rock, laid tile, installed electrical
3 and plumbing fixtures, did all low voltage wiring in the bottom floor, did all interior priming
4 and painting throughout the entire house, all the interior Material Density Fiberboard trim,
5 hung each door and closet door, installed windows, coated and sealed cedar, installed solid
6 surface deck off of the middle floor, custom framed the interior, installed infloor heating in two
7 of the bottom floor bathrooms, performed electrical work, graded the building site prior to
8 development (id.). The most recent appraisal of the home values the home at \$875,000.00.²

9 During construction of the home the twins (ALM and CRM) were born in October of 2005.
10

11
12 After construction of the home, there was a landslide event caused by the city of
13 Issaquah discharging water onto the property in January of 2006.³ The parties hired attorney's
14 and filed a lawsuit against the city.⁴ In November of 2008 our last child (MTM) was born! The
15 family at that time, decided that a live in AuPair would better suit their needs and give them the
16 opportunity to craft a more comprehensive learning and activity plan for the children and the
17 parties decided to go through a Federal Agency (AuPair Care) and we hired Sabrina Correa
18 from Brazil.⁵ The Father engaged with the hiring of Sabrina who arrived in February of 2008
19 and worked with Sabrina in taking care of the children (id.). After years of litigation from 2006
20

21
22 ² The Father incorporates and references the appraisal dated February 7th, 2011 on the Issaquah home (valued at
\$875,000.00) as Father's Trial Brief, Exhibit D. (CP...269-280)

23 ³ The Father incorporates and references the email detailing the City of Issaquah discharging water onto our
property and causing a landslide event as Father's Trial Brief, Exhibit E. (CP...269-280)

24 ⁴ The Father incorporates and references the civil suit that was filed on the parties' behalf against the City of
Issaquah (Case No. 08-1629 RAJ) as Father's Trial Brief, Exhibit F. (CP...269-280)

25 ⁵ The Father incorporates and references the application and intake documentation of AuPair Sabrina Correa as
Father's Trial Brief, Exhibit G. (CP...269-280)

1 through to 2009, which the attorney(s) billed the parties approximately \$100,000.00, the
2 attorneys' withdrew because the Father and the Respondent could no longer afford their legal
3 fees (CP...269-280).
4

5 The Father has continued the litigation since 2009 (id.). The Father again spent
6 countless hours in court, filing and responding to pleadings and litigating the City and their
7 attorneys at the Federal level.⁶

8 The marriage continued to worsen over the course of time and the Father requested that
9 the parties attend marriage counseling in 2009 which the Respondent claimed was a waste of
10 her time as it had failed her in her previous marriage (CP...269-280).
11

12 In February of 2009, with just a few weeks remaining on her contract with the family,
13 that the Respondent fired the families first AuPair, Sabrina, after she had requested to take time
14 off to go to the United States Immigration Office for an interview (CP...269-280). This early
15 termination was witnessed by Albina Terpetska's, the family's second AuPair who came to the
16 family to have a smooth transition and to spend time with all parties during the transition.⁷
17

18 During the last several years, the Father was the primary care-giver in the family,
19 waking with the children, getting them ready for their day, school, pre-school or day care;
20 having breakfast with them, getting them dressed and packing their backpack.⁸ The Father
21

22 ⁶ The Father incorporates and references a previous pleading which requests the Petitioner to obtain counsel and or
23 withdraw from the civil litigation. It was impossible to continue litigation when someone had a known credibility
24 issues. The request is detailed out in the pleadings (CP...269-280).

24 ⁷ The Father incorporates and references the application and intake documentation of AuPair Albina Terpetska as
25 Father's Trial Brief, Exhibit J. (CP...269-280)

25 ⁸ The Father incorporates and references the response to the temporary restraining order, pleading to be able to see
his children and his motion to reconsider and terminate the restraining order, again, just pleading to be able to see

1 routinely engaged with the MMM's kindergarten teacher, met with MMM for lunch at her
2 school and would play with MMM and her school friends at recess (id.). The Father had
3 enjoyed taking them to the park, watching them grow and develop and learn. In 2009 and 2010,
4 the Respondent had increased her travel over time spending approximately a third of the time
5 out of town, had become less attendant to the children's daily activities, she left the house
6 before the children were awake and spent at least three nights a week away from the home not
7 returning until the children were asleep (id.). The Father enjoyed the time he got to spend with
8 the children and supported to Respondent's requests to leave early before the children were
9 awake and to stay at the office late (id.).
10
11

12 The Father felt that it was important for his children to go to pre-school, citing the
13 benefits that an early educational experience and how it was highly correlated to the child;
14 going to college, getting a post graduate degree, having more income, having more opportunity,
15 being engaged in arts, sports and extra-curricular activities.⁹ The parties agreed that their first
16 born child would go to pre-school and, though it was financially difficult, they afforded this
17 cost (CP...269-280). The first born child then enrolled in public schools (Issaquah Valley
18 Elementary School) and in late 2009 early 2010 the Father was budgeting out the next school
19 year, which were to include the twins going to preschool (id.). The cost for the preschool was
20 budgeted at twenty thousand dollars and could be financed through the Father's rental portfolio
21
22

23 his children. These pleadings and other have presented undisputed facts and evidence that support the Father as the
24 primary care given and document the Petitioner's absences from the children. (CP...1-204)

25 ⁹ The Father incorporates and references two studies, The High/Scope Perry Preschool Study Through Age 40 and
Education Pays – The Benefits for Higher Education for Individuals and Society as Father's Trial Brief, Exhibit K
and Exhibit L. (CP...269-280)

1 which the Father explained to the Respondent in January, February, March and April of 2010
2 (CP...269-280). The Respondent, despite her willingness to educate the first born child and to
3 the shock and dismay of the Father, adamantly refused this request (id.). The Father also had
4 learned, at around January of 2010, that Miss Terpetska had falsified her application to the
5 AuPair agency so that she could leave her country and she disclosed what had happened to her
6 at the hands of her real Father (CP...269-280)..

8 The Father, in March of 2010, informed the Respondent his wish for a divorce and that
9 he would be seeking full custody of and decision making for the children (CP...269-280). The
10 Father instructed the Respondent to seek an attorney (id.). The Respondent promptly went to
11 police on April 5th, 2010 and alleged domestic violence against the Father (id.). The
12 Respondent never indicated or discussed anything with the Father and they continued to both
13 reside in the same home for the entire month of April (id.). The Father was notified of alleged
14 complaint on April 27th, 2010 (id.). The Father stayed at the residence before during and after
15 the alleged assault (id.). On Saturday, May 1st, 2010 the Respondent requested that he spend the
16 entire day removing her personal belonging from one of the Father's rental properties then,
17 upon his return, was greeted by the police who promptly removed him from his house in front
18 of his children and was served with dissolution papers.¹⁰

21 The Numerous motions were filed thereafter and sadly Respondent has been fully
22 committed to prevent the Father's access, contact and or any relationship with his children.¹¹
23 The Respondent continued to contact the Father and make harassing phone calls, claiming that

24 _____
25 ¹⁰ See Dkt. #1
¹¹ See Dkt., supra.

1 the Father owed the Respondent money, contacting him at his office and threatening him with
2 further criminal prosecution (CP...269-280).

3
4 A Guardian Ad Litem was assigned and she was repeatedly made false and misleading
5 statements in her reports.¹² The Guardian failed to file a timely final report, interview the
6 witnesses of the Father or interview the Father. The Guardian was in violation of GALR 2 (b),
7 (c), (e), (f), (g), and (j) (id.).

8 Ironically, the money saved for the twin's pre-school education was spent on attorneys
9 and any expected college education funding has been erased. The children have had no contact
10 with the Father for months.

11
12 The issue of custody of the children and division of the community assets then went to
13 trial in May of 2011 in which a decision was rendered by the trial court in June of 2011.¹³

14 **III. ARGUMENT & AUTHORITY**

15 **A. The trial court manifestly abused by ignoring RCW 26.09.187 (3) ignoring**
16 **factual evidence and coming to baseless and meritless conclusions. The**
17 **Father's role as PRIMARY AND SOLE caregiver of the children is**
18 **undisputed and should be restored immediately to prevent further harm to**
19 **the children.**

20 A court's decision is manifestly unreasonable if it is outside the range of acceptable
21 choices, given the facts and the applicable legal standard; it is based on untenable grounds if
22 the factual findings are unsupported by the record; it is based on untenable reasons if it is based

23
24 ¹² The Father incorporates and references the grievance filed against the Guardian Ad Litem on March 9th, 2011
and the email communication to Beth Cluster, along with the grievance form and supporting detail (CP...280-282)

25 ¹³ See lower court order for the June 6th, 2011 Decree of Dissolution (DCD), Findings of Fact and Conclusion of
Law (FNFCL), Parenting Plan (PP) and Order of Child Support (ORS). (CP...353-398).

1 on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re*
2 **Marriage of Littlefield**, 133 Wash.2d 39, 47, 940 P.2d 136 (1997).

3
4 The Respondent and her attorneys know that the residential provisions of the children
5 RCW 26.09.187 (3) (a) states that each parent's past and potential for future performance of
6 parenting functions as defined in RCW 26.09.004(3), **including whether a parent has taken**
7 **greater responsibility for performing parenting functions relating to the daily needs of the**
8 **child** (emphasis added). **The trial court is to give the greatest weight to this factor.**
9 (emphasis added) The trial court is also not to draw a presumption in favor of the **temporary**
10 (emphasis added) primary care giver. RCW 26.09.191(4); *In re Marriage of Kovacs*, 121
11 Wn.2d 809 P.2d 629 (1993). Plain and simple; the Respondent in this case wasn't present in the
12 children's lives to be considered even a secondary parent.¹⁴ The trial court makes an egregious
13 and unsupported claim to grant custody to the Respondent as it flies in the face of state law and
14 the precedence that was set forward.

15
16 On top of the fact that the Father was the only parent that was consistently present the
17 children's lives, the children are used to being with the Father when they awoke, being with
18 them when they went to sleep, seeing them at school, having their Father take them to the
19 Dentist, Doctor and Emergency room, having their Father take them to the playground, park, on
20 walks and hikes, building snowmen, swimming, riding their bike, etc. etc. Historically, the
21 Father was the primary care giver as the Respondent was not even present for a significant
22 portion of the time the months and years leading up to May 1st, 2010 let alone did she every
23

24
25 ¹⁴ The Father incorporates and references the Petitioner's travel schedule that shows that **SHE WAS NOT IN**
THE STATE OF WASHINGTON FOR ALMOST 50% OF THE TIME. (emphasis added) (CP...86-124)

1 accompany the children outside by herself, take them to the Dentist, Doctor's, emergency room
2 or did she even attend all of her first born child's parent teacher conference.
3

4 As indicated in the pleadings and are not in the dispute, the Father was the sole care-
5 giver for their first born child while attending Issaquah Valley Elementary school. (CP...16-85)
6 The Father had consistent communication with their teacher (Miss Henson) and would work
7 with the school district with any behavioral issues that was involved. Numerous electronic
8 mails were communicated back and forth between the parties (id.). The Father attended each
9 and every parent teacher conference. (id.)
10

11 As indicated in the pleadings and not in dispute, the Father has taken the children to all
12 Dentist, Doctor, School function and care givers. This is evidenced by the statements given
13 from the children's dentists and the check-in, check-out documents of the back-up care
14 provider.¹⁵

15 As indicated in the pleadings and not in dispute, the Respondent travels extensively and
16 is not with the children a majority of the time. **The Respondent cannot be bonded with the**
17 **children while not being present for 19.45% of the time in the twelve months prior to**
18 **separation and 33.71% for the last three months prior to separation.** (Emphasis added)
19 (CP...281-285) The Respondent would also leave the home before the children were awake
20 during the work week, would frequently, "stay at work" until the Father had put the children to
21 bed and fail to be present for these children. (id.)
22
23

24 ¹⁵ The Father incorporates and References his June 24th, 2010 Reply Declaration. Specifically this declaration
25 highlights who was the primary care-giver as the Father dropped the children off and picked them up 99% of the
time. (CP...227, 250-268,52-70, 219)

1 As indicated in the pleadings and not in dispute, the Father would frequently take the
2 children to the park, take them out to build snowmen and have snowball fights, take them on
3 walks, take them on hikes through the forest that surrounds our home, take them to the grocery
4 store, take them to the hardware store, take them to his office, take them to the lake to go
5 swimming and play with them outside. The Respondent performed none of these functions
6 throughout the marriage. (id.)

7
8 RCW 26.09.187 (3) (a) states that each parent's past and potential for future
9 performance of parenting functions as defined in **RCW 26.09.004(3), including whether a**
10 **parent has taken greater responsibility for performing parenting functions relating to the**
11 **daily needs of the child** (emphasis added). The trial court is to give the greatest weight to this
12 factor. The trial court is also not to draw a presumption in favor of the temporary (emphasis
13 **added) primary care giver. RCW 26.09.191(4); In re Marriage of Kovacs, 121 Wn.2d 809**
14 **P.2d 629 (1993).**

15
16 The law states that the parent who has been the sole and primary caregiver to the
17 children, should be the factor given the greatest weight as to what parent is awarded custody.
18 The facts presented above are undisputed and supported by the evidence provided, not mere
19 baseless self-serving narratives of the Respondent. The trial court ruling is not supported by
20 Washington State Law or precedence or evidence. The trial court ruling is in direct conflict
21 with state law. The trial court bases their decision solely on a meritless claim of “history of acts
22 of domestic violence as defined in RCW 26.50.01.10(1)” which are addressed below in Section
23 C of this brief. I would ask that the Appeals Court adhere to the RCW’s and precedence stated
24
25

1 above in this case and overturn the trial court ruling on behalf of the children.
2

3 **B. The Respondent has repeatedly and consistently violated the law and each**
4 **of the below offenses constitute an attempt to physically harm, harass and**
5 **or prevent the Father from having and maintaining a relationship with his**
6 **children which under RCW 26.09.191 (3) (a) and (d) is an abusive use of**
7 **conflict. The trial court has ignored the abusive pattern demonstrated by**
8 **the Respondent.**

9 The Respondent has physical and verbally assaulted the Father hundreds of times before
10 during and after the marriage, in front of the children and in private quarters. The assaults
11 included beatings, verbal abuse, threats of physical harm and continued false police reporting
12 and throwing of inanimate objects at the Father.

13 After May 1st, 2010, the Respondent opened several pieces of mail that was addressed
14 to the Father at the family home in Issaquah Washington. The Respondent intercepted checks
15 that were made out specifically to the Father and deposited those checks to her personal
16 account. These checks were rental income on properties owned by the Father previous to the
17 marriage.¹⁶ The Father has solely managed these rental properties since purchasing them. The
18 evidence that the checks had been mailed to “Andrew Machleid” and made out to only
19 “Andrew Machleid” provides proof of the Respondent’s actions (id.). 18 U.S.C.A. § 1344 (2)
20 Whoever knowingly executes, or attempts to execute, a scheme or artifice to obtain any of the
21 moneys, funds, credits, assets, securities, or other property owned by, or under the custody or
22 control of, a financial institution, by means of false or fraudulent pretenses, representations, or
23 promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or
24 both. The Father wishes that the court would factor in this type of behavior when it decides

25 ¹⁶ The Father incorporates and references an email from one of his tenants who states the following on June 6th,
2010, “Just checked my bank account and the rent check has been deposited.” Then the Father asked her, “...just
to confirm via email... **you addressed the envelope to me and you wrote the check to me as well (emphasis
added)**, is that correct...” in which she replied on June 7th, 2010, “Yes, that is correct”. (CP...285-288)

1
2 how blatantly criminal the Respondent can be and what type of example that sets for the parties
3 children.

4 18 U.S.C.A. § 1702. Obstruction of correspondence. Whoever takes any letter, postal
5 card, or package out of any post office or any authorized depository for mail matter, or from
6 any letter or mail carrier, or which has been in any post office or authorized depository, or in
7 the custody of any letter or mail carrier, before it
8 has been delivered to the person to whom it was directed, with design to
9 obstruct the correspondence, or to pry into the business or secrets of
10 another, or opens, secretes, embezzles, or destroys the same, shall be
11 fined under this title or imprisoned not more than five years, or both. Exhibit P indicates that
12 the Respondent has opened the mail of the Father multiple times, including the mail addressed
13 to his consulting business M Consulting. (id.)

14 The Respondent is occupying the home at 135 Mt. Quay Drive NW Issaquah
15 Washington 98027. The Respondent has no certificate of occupancy and has, “mysteriously”,
16 avoided prosecution despite being in contact with the several persecutors’, city employees and
17 several city attorneys. It is odd at how the City of Issaquah treats its citizens differently, where
18 one can be prosecuted and the other carries on as if the law didn’t apply to them.

19 The Respondent had previously cut off mobile phone service with the Father’s carrier as
20 she works for Verizon Wireless (the Father’s mobile operator up until November of 2011),
21 doing so on April 29th and April 30th of 2010. The Father, having received an offer through his
22 employer to reimburse the cost of a new Windows mobile phone while also insulating himself
23 from having the Respondent discontinue his service unexpectedly, decided it was best to switch
24 carriers and purchase a Windows mobile phone. Upon selling his old phone, the Father found
25 out that he need an account number and password and that Verizon had refused to give that

1
2 information to the Father. The Father requested that information from the Respondent through
3 correspondence with her attorney. (id.) The Respondent quickly reported that the phone was
4 lost or stolen committing insurance fraud, violating RCW 48.30A. The Respondent
5 demonstrates, that she will not only disconnect mobile phone service of the Father but would
6 also abuse her position with her company and file a false claim that he phone has been lost or
7 stolen to harass the Father. The Respondent has nothing to gain from preventing the sale of an
8 old mobile phone yet repeatedly financially disrupts the Father at every turn. Again, this shows
9 that her motivation is to engage in illegal and unethical behavior to destroy the Father.
10 (CP...287)

11 The Father received threatening phone calls at work from the Respondent throughout
12 the proceedings regarding her willingness to allege rape against the Father, continued abuse and
13 neglect and further disparage him if he would not agree to give up custody of the children along
14 with paying her costs for her attorney and assist in budgeting her expenses while continuing to
15 work on the family's home, litigate against the City of Issaquah and manage the retirement
16 assets. (CP...288)

17 The trial court failed to factor in the Respondents behavior and motive in this case,
18 making this case more about a race to "meritless accusations" than about what is best for
19 children in this matter. The Respondent has committed several state and federal crimes before
20 during and after the separation and has shown signs of repeated abuse and harassment. The
21 court has a duty to the people to report and prosecute these crimes to the fullest extent of the
22 law. The lower courts not only failed to report and prosecute these crimes but also failed to
23 factor this behavior into the decision on to who would have custody of the children.

24 **C. The events specifically regarding the April 4th, 2010 constitute libelous and**
25 **slandorous claims that are nothing more than the only (emphasis added)**
legal strategy for the Respondent. Even if the allegations were true there is

1
2 **no basis for limiting the Father’s access to his children under RCW**
3 **29.09.191(3). The lower courts abused their discretion and made an**
4 **egregious error in judgment when disallowing the Father to call the police**
5 **officer to testify in this case.**

6
7 1.) The Respondent arrives at the Issaquah police station on April 5th, 2010 claiming
8 that she had been assaulted on April 4th, 2010. Officer Munoz, the Officer taking the
9 report, indicates that there is **no evidence that an assault has occurred and the**
10 **officer goes further that the Respondent would not allow pictures to verify this**
11 **fact.** Why wouldn’t the Respondent want to provide Officer Munoz something
12 tangible to support her claim? The trial court abused its discretion by refusing to
13 allow Officer Munoz the opportunity to testify on behalf of the Father. (CP...361)

14 2.) On April 4th, 2010, the Father was driving the vehicle with his four children, the
15 Respondent and the family’s Au pair outside of Bellevue Washington, when the
16 Respondent attacked the Father. The Father, in attempt to prevent the Respondent
17 from causing the Father to lose control of the vehicle shielded himself from the
18 Respondents attack. The Respondent has a history of physical abuse, and repeatedly
19 attacked the Father unprovoked and the Father has a duty to protect his children and
20 Au Pair that are in the vehicle and a right to defend himself under RCW
21 9A.16.110(1). **RCW 9A.16.110 (1) states that, “No person in the state shall be**
22 **placed in legal jeopardy of any kind whatsoever for protecting by any**
23 **reasonable means necessary, himself or herself, his or her family, or his or her**
24 **real or personal property, or for coming to the aid of another who is in**
25

1 imminent danger of or the victim of assault, robbery, kidnapping, arson,
2 burglary, rape, murder, or any other violent crime". It also goes without saying
3 that a Father would act instinctively to cure any dangerous circumstance which
4 would jeopardize the safety of his children.
5

6 3.) In arguendo on the claim of assault by the Respondent, the alleged assault doesn't
7 meet the bar for RCW 26.09.191 which states that, "a history of acts¹⁷ (emphasis
8 added on the plurality) of domestic violence as defined in RCW 26.50.010(1) or an
9 assault which causes grievous bodily harm¹⁸. There is no evidence of harm EVER
10 occurring in this case (id.). This incident, if it had even a scintilla of truth, doesn't
11 meet the bar set in the RCW 26.09.191. The trial court has manifestly abused its
12 discretion by using one unmeritous and unsubstantiated claim to prevent the
13 Father from gaining custody of his children.
14

15
16 D. **The trial court manifestly abused its discretion in the division of property**
17 **by failing to make a just and equitable distribution of the property and**
18 **liabilities.**

19 **Primary Residence:**

20 The trial court manifestly abused its discretion by awarding the Father 0% of the
21 primary residence. The Father requests that he would be awarded 50% of the primary residence
22

23 ¹⁷ In arguendo, the Father incorporates and references the Police report where the Petitioner claims that this was,
24 "the only one time". (CP...235-237) The Petitioner had, at that opportunity, to embellish and perfect her strategy
25 but failed to reach the bar that would set any RCW 26.09.191 restrictions.

¹⁸ In arguendo, the Father incorporates and references the police report where the Officer Munoz witnesses no
(emphasis added) evidence of any harm that had occurred and when he requested to photograph the Petitioner to
document his findings, which the Petitioner refused to give. Emphasis added (CP...237)

1 as that would be a fair and equitable distribution of the property. Property acquired during
2 marriage is presumed to be community property, for purposes of equitable distribution of
3 property in divorce proceeding; presumption may be rebutted, however, with clear, cogent, and
4 convincing evidence. In re Marriage of Zahm (1998) 91 Wash.App. 78, 955 P.2d 412, review
5 granted 136 Wash.2d 1020, 969 P.2d 1065, affirmed 138 Wash.2d 213, 978 P.2d 498. In a
6 dissolution action, the trial court must make a “just and equitable” distribution of the property
7 RCW 26.09.080. The Father had constructed the family home from 2004 to 2006 and did
8 continuous work on the property up until 2010. The Father produced substantial equity as a
9 result of his efforts according to the current valuation and the amount of the existing debt
10 outstanding on this property. The Father has taken on the role of financier, general contractor
11 and tradesman in the creation of the family home.¹⁹ The existing trial court ruling not only
12 awards 0% equity to the Father but **also was awarded 0% of the equity for his efforts in**
13 **building the home** (emphasis added).

14
15
16 The trial court has essentially ignored the Father’s right to any community property.
17 Consideration of each party's responsibility for creating or dissipating marital assets is relevant
18 to just and equitable distribution of property in dissolution proceeding. In re Marriage of
19 Williams (1996) 84 Wash.App. 263, 927 P.2d 679, review denied 131 Wash.2d 1025, 937 P.2d
20 1102. The Father respectfully requests that the Appeals Court give the Father 50% of the
21 equity to the Father and that the Father be awarded an additional amount customary to a
22
23

24 ¹⁹ The Father incorporates and his original brief to the lower court which contains the acquisition of the land,
25 budget submitted to the lender, (CP...290-292) communications with subcontractors and local building departs
through the completion of the project.

1 “General Contractor” cost for his construction of the home or an amount the Appeals Court
2 deems just. The customary General Contractor’s mark-up is 15% of the value of the project, or
3 \$131,250.00 (15% of \$875,000.00) (CP...292).
4

5 The Father also requests that the Respondent be given 15 days to comply with the court
6 order that the debt for the primary residence is to be paid for by the Respondent as she has
7 repeatedly refused to comply with this court order. Delaying the compliance with this court
8 order destroys the Father’s credit rating as the debt associated with this property remains solely
9 in his name. Allowing the Respondent to delay this transaction prohibits the Father from
10 participating in the capital markets during this extraordinary time of cheap debt and will
11 severely disadvantage him for years to come.²⁰
12

13 **Retirement Accounts:**

14 The trial court awarded the each party **50%** of the asset value (or decline in value) for
15 each of the party’s retirement accounts while married until the time of separation, as stipulated
16 during trial. However, the Father was not awarded anything for the management of these assets.
17 The typical investment cost for managing assets ranges around **2%** of the value of the
18 retirement asset. (CP...292) Consideration of each party's responsibility for creating or
19 dissipating marital assets is relevant to just and equitable distribution of property in dissolution
20 proceeding. In re Marriage of Williams (1996) 84 Wash.App. 263, 927 P.2d 679, review
21 denied 131 Wash.2d 1025, 937 P.2d 1102. The Respondent’s retirement accounts total
22 approximately \$190,822.13 (401K: 150,851.51 and Roth IRA \$39,970.62). The annual fee on
23

24 _____
25 ²⁰ <http://www.forecasts.org/fha.htm> predicts that mortgage rates will bottom out in October of 2011 then start in
rise through the first two quarters of 2012.

1 this account would be \$3,816.44 (2%). The Father would respectfully request the fee's that
2 would be commensurate with the management of those assets during the course of the marriage
3 or a value that the courts deem just. The Father also requests that a court order be put in place
4 for the distribution of the retirement assets be executed within a 15 days as the Respondent is
5 failing to distribute the property in accordance with this stipulated order and has professed that
6 she would never comply with this order.
7

8 The trial court's refusal to acknowledge the active management of those assets denies
9 the Father a just and equitable distribution of those assets in accordance with the party's
10 responsibility for creating those assets and is a manifest abuse of discretion.
11

12 **Separate Property (Father's Rental Properties):**

13 The Father had acquired two rental property prior to marriage, a condo in 1996 and a
14 house in 1999. The condo was rented out in 1999 and the house was rented out in 2000. After
15 marriage in 2002, neither the condo nor the house has **EVER** changed in characterization. The
16 trial court made a manifest error in awarding any interest to the Petitioner for these properties.
17 (See FNFCL page 2.8.2). The character of property, as community or separate, is determined as
18 of the date of acquisition. *In re Marriage of White*, 105 Wash.App. 545, 550-51, 20 P.3d 481
19 (2001). A spouse seeking community interest in separate property **must overcome**
20 **presumption that separate property maintains its separate character.** (emphasis added) *In*
21 *re Marriage of Pearson-Maines* (1993) 70 Wash.App. 860, 855 P.2d 1210. The character of
22 separate property continues through transfers if it can be traced and identified; the separate
23 **property is not rendered community property unless the separate property is commingled**
24
25

1 **to the extent that it may not be distinguished or apportioned.** (emphasis added) (*id.*). In this
2 case, the Respondent had no active management, role or interaction whatsoever with any of the
3 current or past renters, was not actively engaged or did anything to benefit the rental portfolio
4 or process and was not actively involved in the maintenance of the properties.²¹ The rental
5 properties have always had their own separate bank account in which the rent was deposited,
6 mortgage, tax and insurance paid, and was **never** (emphasis added) comingled with the joint
7 checking account or any community assets. (*id.*) The rental properties were operated by the
8 Father at break even and never contributed nor detracted from the marital community assets.
9 (*id.*) These properties were kept completely separate from other community assets as they have
10 their own contractual agreements.²²

11
12
13 **Attorney's Fees:**

14 The trial court made manifest abuse of discretion in awarding \$20,000.00 in attorney's
15 fees to the Respondent. The Respondent makes **35%** more than the Father and the Respondent
16 has the financial capability to hire an attorney throughout these proceedings while the Father
17 has exhausted all of his financial resources and can't afford his own attorney, the Father and the
18 respondent have a 42/58 percent split of income.²³ In determining whether attorney's fees should
19 be awarded, the needs of the requesting party must be balanced with the other party's ability to pay.
20 *Chapman v. Perera*, 41 Wash.App. 444, 455, 704 P.2d 1224 (1985); *In re Marriage of Campbell*,

21
22
23 ²¹ The Father incorporates and references the email communications between the former renters of the Seattle
24 Condominium and the current renters of the Seattle, which were acquired solely by the Father prior to the marriage
25 in 1996 and 1999 respectively (CP...292-293)

²² The Father incorporates and references the last two rental agreements (CP...240-249).

²³ The Father incorporates and references the Father's Financial pleadings presented at trial, specifically the child support worksheet that shows the gross monthly income (CP...344)

1 37 Wash.App. 840, 846, 683 P.2d 604 (1984); In re Marriage of Young, 18 Wash.App. 462, 466,
2 569 P.2d 70 (1977). In this case the Father is penalized from bringing his case to the court, as if the
3 trial court presumed that the Father had no right to bring a case forward in the state of Washington.
4 Neither party is entitled to attorney's fees as a matter of right. *Valley v. Selfridge*, 30 Wash.App.
5 908, 639 P.2d 225 (1982) and this is certainly the case here.
6

7 Claims for attorney's fees and expenses shall be made by motion to the court CR 54(d)
8 and no motion was ever made. Even if the attorney's fee's had merit in this case, which it
9 clearly does not, it would have required a motion to the court in which the Father would have
10 had a chance to document his response.

11 The Father has right and an obligation to his children to provide them with the best
12 possible opportunities for success in their lives which would be accomplished only through the
13 primary custody of the Father which the Father has, and will continue to, exercise his legal
14 rights and continue his obligations to the children as the primary parent. A right to a trial or a
15 right to adjudicate a dispute between two parties should not be "chilled" by the trial court by
16 awarding fees which are not based in law and were not properly presented to the court or to the
17 Father. The trial court makes a manifest abuse of discretion when the Respondent makes
18 disproportionately more than the Father and the Respondent has demonstrated that she can
19 afford her own attorney throughout the proceedings. The Father requests that the parties be
20 required to pay their own fees and that this award is stricken.
21
22

23 **Community Property (Litigation):**
24
25

1 The Father has also spent over 200 hours on the community property litigation since
2 April 28th, 2010. (CP...293-294) Consideration of each party's responsibility for creating or
3 dissipating marital assets is relevant to just and equitable distribution of property in dissolution
4 proceeding. In re Marriage of Williams (1996) 84 Wash.App. 263, 927 P.2d 679, review
5 denied 131 Wash.2d 1025, 937 P.2d 1102. The Respondent should be required to reimburse the
6 Father 50% of the reasonable costs that he has spent on this case after April 28th, 2010 (or
7 \$20,000.00) for that is community savings generated by handling the community property
8 litigation. The trial courts failure to recognize this hard work and effort is a manifest abuse of
9 discretion.
10

11
12 **Community Property (Other):**

13 The trial court made a gross error in judgment when it awarded all the residual
14 community property debts and assets (such as Automobiles, televisions, electronics, beds,
15 furniture, dining-room tables and chairs, tapestry/paintings, artwork, nook dining-room table
16 and chairs, recliner, audio/video recording equipment, rugs, bedding, clothes, appliances, tools
17 etc.) with a 0% percentage allocation to the Father. These assets were part of the marital
18 community and should be split evenly between the community. There was no evidence brought
19 forward at trial by the Respondent that would merit a 100% award of the community property.
20 This a gross manifest abuse of discretion of the trial court. The Father requests that the Appeals
21 court make an equal distribution of the Household Assets and Vehicles that have been
22 presented at trial and make a fair and equitable award of 50% to the Father.²⁴
23

24
25

²⁴ The Father incorporates and references the schedule of Assets he attached to his trial brief (CP...312).

1 **Family home emergency repairs:**

2
3 The trial court manifestly abused its discretion when it awarded “Family home
4 emergency repairs” to the Respondent in the amount of \$7,037. (CP...371) All the
5 maintenance, repairs, upkeep or work that occurred on the Respondents property after
6 separation are not the responsibility of the Father as the parties had separate residences and
7 were restrained from seeing each other. The Father has his own residence to maintain and
8 should not be required to maintain the residence(s) of the Respondent. The trail court’s
9 requirement for the Father to pay for maintenance of a property after the legal date of
10 separation (after being evicted from the house that he built) is a gross manifest abuse of
11 discretion. There are always going to be costs to maintain a home and it is repugnant that the
12 Respondent would ask for those costs from the Father and even more disgraceful that the court
13 would award that cost. It is certain that the courts would not award that cost to the Father and
14 this behavior demonstrates the bias of the court. The Father asks that this amount be stricken
15 from the property awarded to the Respondent. (CP...371).

16
17 **45% of Children’s Build bill**

18
19 The trial court manifestly abused its discretion when it awarded 45% of the “Children’s
20 Guild bill” as there is no supporting evidence of the bill, no invoice and the sole proprietor of
21 the Children’s Guild was previously fired and perjured herself during trial. Without an
22 appropriate statement and evidence that the perjurer provided any service the Father would ask
23 that the court strike this amount as this invoice would be tainted with the fees driven from
24 unscrupulous activity. (id.)
25

1 **Verizon Wireless bill**

2 The trial court manifestly abused its discretion when it awarded “Verizon Wireless bill”
3 to the Respondent in the amount of \$440. (CP...371). The service had been disconnected by the
4 Petitioner as a means to harass and disrupt the Father (CP...287-288). The Father had
5 established phone service with another phone service provider because of the Petitioners
6 continued abuse and harassment. The Father has considered in his presentation to the court all
7 the payments that were made to Respondent and presented this to the court that included this
8 charge, essentially paying for the service while not receiving it (CP...418-419)
9

10 **Community liabilities to be paid by husband (all other)**

11 The trial court manifestly abused its discretion when it awarded “Community liabilities
12 to be paid by the husband” to the Respondent in the amount of \$21,143 including line items
13 that involve day care expenses and extra-curricular activities. (CP...371). The Father has
14 submitted a joint expense worksheet which was a combination of verified costs and payments
15 by the Respondent and the Father from the date of separation to the date of trial of which the
16 Petitioner owes the Father \$2,540.20 (CP...418-419). The Father would ask that the court strike
17 the awards as they would equate to the Father paying for an award that he has already paid for.
18 The is completely unfair as there were community debts that the Respondent did not pay for yet
19 is claiming that these bills are due, this absurd behavior is insulting and has caused the Father
20 great hardship.
21
22

23 **Non-divisible Assets**

1 The Respondent had a breast augmentation and eye surgery that dramatically improved
2 her physical appearance. The costs of these surgeries were approximately \$20,000.00
3 (\$15,000.00 for the breast augmentation and \$5,000.00 for the eye surgery). (CP...294-295)
4 The family community absorbed these costs and the parties maintained a mutual sacrifice in the
5 Respondent obtaining these cosmetic enhancements. The lower court abused its discretion by
6 ignoring these cosmetic benefits that depleted the marital community.
7

8 Numerous other states have also granted relief to the supporting spouse based in part on
9 increased earning capacity. *See, e.g., Moss v. Moss*, 639 S.W.2d 370 (Ky.Ct.App.1982); *DeLa*
10 *Rosa v. DeLa Rosa*, 309 N.W.2d 755 (Minn.1981); *Hubbard v. Hubbard*, 603 P.2d 747
11 (Ok1.1979); *O'Brien v. O'Brien*, 114 Misc.2d 233, 452 N.Y.S.2d 801 (1982); *Daniels v.*
12 *Daniels*, 20 Ohio Ops.2d 458, 185 N.E.2d 773 (Ct.App.1961). *See also* Ind.Code § 31-1-11.5-
13 11(c) (1980), overruling Wilcox v. Wilcox, 173 Ind.App. 661, 365 N.E.2d 792 (1977).
14

15 The courts must take into account the marital assets that provided this benefit of the
16 Respondent The Father respectfully requests to be reimbursed \$10,000.00 (50%) of the cost of
17 the Respondents cosmetic surgeries.
18

19 **Witnesses at trial**

20 The trial court prohibited the Father from calling witnesses (friends, family members,
21 attorney's, police officers and building officials) that would have identified motives, impeached
22 testimony of the Respondent and impeached the testimony of other witnesses.²⁵ Any party has a
23

24 ²⁵ The Father incorporates and references the clerk's notations during trial where several witnesses that the Father
25 wanted to bring forward were denied by the trial court judge (CP...345-342). The Father also references the
witness list that gave testimony at trial (CP...361)

1 right to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to
2 receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-
3 finder. RCW 13.34.090(1). Judge Friendly listed what he called the “elements of a fair
4 hearing”: (1) an unbiased tribunal; (2) notice of the proposed action and the grounds asserted
5 for it; (3) an opportunity to present reasons why the proposed action should not be taken; (4)
6 **the right to call witnesses**; (5) the right to know the evidence against one; (6) the right to have
7 the decision based only on the evidence presented; (7) counsel; (8) the making of a record; (9) a
8 statement of the reasons; (10) public attendance; (11) judicial review. Henry J. Friendly, “*Some*
9 *Kind of Hearing*,” 123 U. Pa. L.Rev. 1267, 1279-95 (1975).

10
11
12 In determining the outcome of the custody of four small children, which is a decision
13 that will forever impact the lives of many, the trial court must take the time to allow all
14 viewpoints to be heard. Specifically, the officer who took the police report, the prosecuting
15 attorney who refused to prosecute the Father at the Respondent’s request, the friends and
16 family members who would have testified upon the Father’s behalf and the attorney’s that had
17 interviewed the Respondent. All of these people could have added valuable testimony for an
18 unbiased fact-finder. Something as bias and egregious of preventing the Father from calling
19 witnesses for testimony in the trial has prohibited a fair trial.

20 21 V. CONCLUSION

22 It is an abuse of discretion for the lower court to rip the children away from the Father
23 who was the primary care-giver in this case. The trial court ignored the fact that the Respondent
24 was not even present in the city that the children resided in a majority of the time and when she
25

1 was, she had made a conscious choice to be absent from their lives. The trial court relies on the
2 events of April 2010 to base the rest of the lives of the four children which, even if the court
3 could find any merit to the unsupported story, then the trial court still falls short of the bar set in
4 RCW 26.50.010(1).

5
6 The assets should be divided equitably as stated above and the Father should receive
7 just compensation for the equity that he has infused into the home, along with is efforts in legal
8 representation and equity investments. The court should consider the earning capacity of the
9 parties. Earning capacity is not a divisible asset, although it is a factor to be considered when
10 dividing community and separate property in dissolution proceeding. Matter of Marriage of
11 Leland (1993) 69 Wash.App. 57, 847 P.2d 518, review denied 121 Wash.2d 1033, 856 P.2d
12 383. The Respondent makes 35% more income then the Father and the Father has sacrificed
13 his career so that he could be present in his children's lives. The Father should not be required
14 to pay the legal costs of the Respondents representation in this matter.
15

16 Lastly, the Court should read all the statements from Exhibit X from the Father's trial
17 brief. These statements are from independent third parties that have seen the Father with his
18 children and have no affiliation to state anything but the facts in this case. The court needs to
19 stand up against the Respondent who would manipulate the courts for her own monetary gain
20 and should do what is in the best interest of the children.
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DATED January 18th, 2012.



Andrew D. Machleid, *pro se*
Representing the Appellant
135 Mt. Quay Drive NW
Issaquah, WA 98027
Office: (425) 722-7617
Cell: (206) 940-0279
machleidlegal@gmail.com