

69133-3

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NO. 69133-3-1

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

In re the Marriage of:

MARY M. WRIGHT,

Respondent/Cross-Appellant,

vs.

KIM B. WRIGHT,

Appellant/Cross-Respondent.

BRIEF OF RESPONDENT

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2013 APR -9 PM 1:54
COURT OF APPEALS DIV I
STATE OF WASHINGTON

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INTRODUCTION

Dissolving the parties' 30-plus year marriage, the trial court divided the community assets – nearly \$18 million – 60/40 in favor of Mary Wright. The court also awarded Mary, who has not worked outside of the home in 25 years, 3 years of maintenance, totaling \$1 million. Dr. Wright will make about \$10 million in just 2.5 years.

Dr. Wright claims that the court's award leaves him "with little to show for three decades building a substantial community estate with the wife." BA 1. Eight million worth of assets, plus a likely \$10 million more in just 2.5 years, is not "little to show."

Dr. Wright essentially claims that in high-asset cases neither spouse has financial need, making maintenance and disproportionate property awards inappropriate. This argument is a throwback to law that was changed over 60 years ago. Maintenance and property awards are not based on upon financial need, but upon multiple factors, including most importantly the parties' post-dissolution financial circumstances. In a long-term marriage like this one, the court may roughly equalize the post-dissolution financial circumstances. Here, Dr. Wright will come out ahead by about \$2.8 million in just 2.5 years. No abuse of discretion occurred.

STATEMENT OF THE CASE

A. The parties divorced after a 30-plus-year marriage.

Mary and Kim Wright married in 1980, after dating for a few years. RP 45-46. Dr. Wright, who was attending medical school at the University of California, San Diego, had just completed a one-year surgical internship. *Id.*¹ Mary was working as a nurse, earning a little more than Dr. Wright. RP 45, 62. The parties then moved to Seattle for Dr. Wright's five-year neurosurgery residency. RP 60.

Mary worked at the Puget Sound Blood Center, taking brief maternity leaves when the parties' first three children were born in 1981, 1983, and 1985. RP 61-63. When Dr. Wright's residency ended in June or July 1985, the parties moved to Colorado so he could join a private neurosurgery practice. RP 62-63. Mary was raising three children, all age four and under, and she then had twins in 1987. RP 63. She chose not to work outside the home knowing that Dr. Wright would be busy in private practice, and feeling like she needed to be home for the children. *Id.*

Dr. Wright wanted to leave the Colorado practice and go out on his own. RP 63. The parties both missed the Northwest, so they moved back to the Seattle area in 1989. *Id.* Dr. Wright started

¹ This brief uses "Dr. Wright" and "Mary" to avoid confusion. No disrespect is intended.

his own practice, and was later joined by three other doctors. RP 64. Mary had three more children in 1989, 1993, and 1995. RP 64-65.

After settling two medical malpractice lawsuits in the late 1990s, Dr. Wright's malpractice insurance rates increased dramatically. RP 65, 784-86. He elected to take a position at Valley Medical Center in Renton, as Valley Medical was self-insured, and would cover the cost of Dr. Wright's "tail" insurance. RP 786.

B. Dr. Wright bemoans his role as the family provider, but that was the "comfortably familiar role" he chose.²

There is no doubt that Dr. Wright worked long, hard hours. BA 8-9. Nor is there any doubt that he was a very good provider for his family. *Id.* But there is also no doubt that Mary worked hard to raise eight children. *Id.*

At considerable length, Dr. Wright expresses his resentment that he worked hard to support a family whom he perceived to be "afflicted with 'excessive consumption.'" BA 8. He described himself as a "mule" "pulling the plow and the party wagon," while the family enjoyed vacations provided by wealthy friends. *Id.*

² CP 250-51, FF 6.

(quoting RP 953-54). He described himself as “strapped in the harness continuing to work.” RP 953-54; *see also* RP 955, 970, 1036-37. But as much as Dr. Wright claimed to resent that role, he never directly confronted these “difficult issues,” falling back into old “comfortable” patterns (CP 228-29, FF 6):

There is something of a sad “every man” quality to Dr. Kim Wright. The author of a poignant 2010 letter he titled “Purpose of Life”, he does hold a tenuous grasp on that elusive subject. He can marvel at the works of Van Gogh, worry about his children contracting “influenza” on Mercer Island, appreciate the challenge of a new frontier and observe with a sigh “You get up and go to work every day and the next thing you know, your life has slipped by.” And yet, rather than directly confronting difficult issues, he has tended to fall back into the comfortably familiar role he describes as “the old mule in his harness, pulling the party wagon.” His work has always been his passion while, no doubt, also serving as a form of escape or avoidance.

C. In 2007, Dr. Wright moved to Alaska, where he could earn five-times more than he earned in Washington.

Dr. Wright was recruited by Alaska Native Medical Center in Anchorage when his contract with Valley Medical ended. RP 788-89. Dr. Wright states the he stood to make six times more in Alaska than he earned in Washington. RP 666, 789-90. He referred to working in Alaska as “following Sutton’s law,” after bank robber Willie Sutton who, when asked why he robbed banks, said

"[h]e found the money where he didn't have to work for it." RP 972-73.

Despite his professed intention to "take a 'break'" in Alaska, Dr. Wright complains that he "was once again working full-time in a high stress practice in order to support the family's lifestyle." BA 11 (citing RP 794). But Dr. Wright knew before even moving to Alaska that he would not be able to support his family working only part-time at Alaska Native. RP 577. Dr. Wright's salary at Alaska Native was \$792,469, about half his annual income in the four years before he moved his practice to Alaska. RP 148-50, 684; Ex 225.

Dr. Wright described his workload at Alaska Native as "laughable compared to what [he] was doing in Seattle." RP 789-90. His reduced workload allowed him to get his commercial pilot's license, his commercial floatplane rating, his instructors' rating, and his instrument instructors' rating, "all basically on the Native Hospital dime." RP 790.

Dr. Wright never intended to work only part-time at Alaska Native – he had always planned to go into private practice with another neurosurgeon, Dr. Paul Jensen. RP 74, 577, 973. Dr. Wright met with Dr. Jensen "ahead of time," and agreed to start

Alaska Neuroscience Associates (“ANA”). RP 577, 792. They opened the surgical practice that became ANA less than two weeks after Dr. Wright arrived in Alaska. RP 973.

Dr. Wright claims that he intended to only to “assist” at ANA, but he quickly realized that he made more as a surgical assistant in Alaska than he had made as a surgeon in Seattle. RP 792-93. This “piqued [his] interest.” *Id.* Dr. Wright had no idea how much he would make at ANA, and enjoyed the extra income. RP 577.

D. Mary chose to stay in Washington with the parties’ three youngest children, and the parties kept up a long-distance relationship.

Dr. Wright claims that when Mary “[r]efused” to move to Alaska with him, he “viewed the parties as separated.” BA 9-10. Mary, however, did not “refuse.” RP 590-92. And Dr. Wright did not share his professed “view[.]” with Mary, and acknowledges that she did not want to get divorced. BA 10.

When Dr. Wright decided to move to Alaska, the parties’ three youngest children were all still in middle school or high school. RP 64-65, 375-76. It “really was never the plan” for the family to move with Dr. Wright. RP 590. Rather, the “plan” was that Dr. Wright would regularly travel back and forth between the family home and Alaska. RP 590-92. Mary likely would have

moved up to Alaska when the youngest children were off to college. RP 592.

Mary knew that it would be difficult for the parties to be apart. RP 376-77. But she thought it would be good for the family in that Dr. Wright would be more available to the family when he was home since he would not be on call. *Id.* Dr. Wright told Mary about an orthopedic surgeon he knew who practiced in Seattle while his family lived in San Francisco. RP 376. He reassured Mary that the orthopedic surgeon's marriage had "done well, and maybe felt even better." *Id.*

Dr. Wright initially planned to work the first two weeks of each month in Alaska, returning home the second two weeks of each month. RP 377. He left on November 1, 2007, and returned home for two weeks over Thanksgiving. *Id.* He came home again the last couple weeks of December for the holidays. *Id.* He knew over time that he would have to work more, but "from the very beginning, his goal was to find more neurosurgeons to provide more coverage so he could be home more." *Id.*

Dr. Wright rented a furnished apartment and had a motorcycle and a car in Alaska. RP 376, 378. He took only a small suitcase of clothing. RP 378. Over the months, he took a few more

clothes, but left most of his clothes and personal items at home, including his snow skis, water skis and toiletries. *Id.* This enabled him to easily “come and go with his little briefcase.” *Id.*

In February 2008, Mary and the parties' three youngest children visited Dr. Wright in Alaska. RP 381. They stayed in Dr. Wright's condo and all went skiing together at a local resort. RP 381-82.

In March, Dr. Wright came home for Easter. RP 382. In April, he came home to Mercer Island and also joined Mary and four of the parties' children in Hawaii. *Id.*

On May 1st, the parties executed wills and powers of attorney while together in Seattle. RP 383, 385; Ex 20, 21. Dr. Wright also came home for Mother's Day weekend in May, and returned again the first weekend of June 2008. RP 385-86. When the school-year ended later in June, Mary and the three youngest girls took a 10-day trip to Alaska to visit Dr. Wright for Father's Day. RP 386.

Dr. Wright came home for the Fourth of July, returned on July 24th for ten days, and returned in late August for the weekend. RP 386-87. He came back in mid-September for a Husky game,

which the parties had regularly attended with friends for many years. RP 387. He returned home again twice in October. *Id.*

In early November, Dr. Wright joined Mary in California to attend an engagement party for their oldest daughter. *Id.* Dr. Wright and Mary then returned home together. RP 388. Dr. Wright also came home for Thanksgiving and Christmas. *Id.*

Dr. Wright came home in early January 2009, and again at the end of the month for a birthday party. RP 388-89. Dr. Wright returned in mid-February to go on a ski trip with Mary and the girls, and returned again in late February. RP 389. In late March, Dr. Wright, Mary, and the girls vacationed in San Diego. RP 389-90.

Dr. Wright came home for Easter weekend in April, and Mother's Day weekend in May. RP 390. He came home in June to celebrate their youngest daughter's eighth-grade graduation. *Id.* He returned for 11 days in July for another daughter's wedding. RP 390-91.

Dr. Wright returned home in August, September, and October. RP 391-92. He returned home again for ten days in November for another daughter's wedding and for Thanksgiving. RP 392-93. And he returned home again for Christmas, staying through New Year's Eve. RP 393-94. He returned for two more

weekends in January 2010. *Id.* This pattern continued throughout 2010: Dr. Wright came home in February; Mary and the two youngest girls visited him in March; Dr. Wright came home in April, for Mother's Day weekend in May, and for the first weekend in June; and the parties went to California for a child's college graduation in mid-June. RP 395.

June 14, 2010, was the parties' 30th wedding anniversary. RP 396. Dr. Wright sent Mary a dozen red roses with a card telling her that he loved her, and wishing her Happy Anniversary. RP 396, 766-67. When Judge Downing noted that the parties' 30th wedding anniversary coincided with the time Dr. Wright's "girlfriend" conceived, Dr. Wright responded: "Well, that's the type of relationship [Mary and I] had." RP 767.

Dr. Wright did not change his regular trips home, even though (unbeknownst to Mary) he had a pregnant girlfriend in Alaska. RP 396-97, 398-99. Dr. Wright came home for the fourth of July, for two weekends in August, and for a weekend in early September. RP 396-97. In late September, Dr. Wright returned home for a week, during which the Wrights took a day-trip to Whidbey Island. RP 397. They decided to stay overnight, as they

were looking for the Inn where they had stayed just before their first child was born. *Id.*

E. When Dr. Wright told Mary he was having an affair and would have a child, the parties made no immediate decision about divorcing.

Dr. Wright returned home in late October 2010. RP 398. The Wrights attended a Husky football game with friends, and went out to dinner afterward. *Id.* During dinner, Dr. Wright told Mary that he had a “girlfriend” in Alaska who was pregnant. RP 398-99. This was the first Mary had heard of Dr. Wright’s affair with a younger pilot whom he was helping to obtain her license. RP 399.

Mary was “devastated.” RP 399, 1025. The Wrights returned to the family home that night and slept in the same bed, as they always did when Dr. Wright was home. RP 399, 403. They went out to breakfast the next day to discuss what they were going to do and how they would tell the children. RP 400. Mary was understandably “overwhelmed” and “shock[ed].” *Id.* They made no decision about divorcing. *Id.*

Dr. Wright came home in mid-November and again at Thanksgiving. RP 401. On Thanksgiving Day, 2010, Dr. Wright read a letter to six of his eight children and Mary, disclosing the affair and “the next Wright masterpiece.” RP 401-02; Ex 18. He

concluded the letter with “I have every intention of loving and caring for my first eight children as much as I always have. I also intend to provide for Mary to the best of my ability. I love you all.” Ex 18.

F. Mary filed for dissolution three months after Dr. Wright’s girlfriend had his baby.

Dr. Wright came back to the Seattle area for Christmas and again in January 2011, right after his baby was born. RP 403-404. Dr. Wright asked Mary to join him at a wine bar, where he suggested that they form a “family partnership” so they could annually gift shares to the children. RP 404. He never mentioned the new baby. *Id.* Mary and her daughter had heard about the baby from someone in Alaska, and Mary finally inquired. *Id.*

Before filing for dissolution in 2011, Mary did not do or say anything to lead Dr. Wright to believe she was “renouncing the marriage.” RP 500. It was a “long and . . . very painful process,” but eventually Mary saw no other choice (*id.*):

It was a long and it was a very painful process for me. It’s not what anything I wanted to do. But, you know, given the circumstances and, you know, Kim having a pregnant . . . and then having a baby and a girlfriend, you know, I thought about it long and hard, but I didn’t end up seeing that there was going to be any other right conclusion for us.

Dr. Wright claims that he and Mary sporadically discussed divorce after he moved to Alaska: “[i]t was something that would

come up.” RP 768. But he acknowledges that for Mary, a Roman Catholic, “divorce wasn’t something she wanted to do.” BA 10 (quoting RP 769). Dr. Wright “chose not to ‘force the issue’” – “it was just easier to do nothing.” BA 10 (citing RP 768-769).

G. Dr. Wright earned about \$5.6 million per year in Alaska, spending about \$10 million on personal investments.

Dr. Wright asserts that despite his intentions to “take a ‘break’” in Alaska, he had to work long, hard hours, “to support the family’s lifestyle.” BA 11. But Dr. Wright did not need to earn \$5.6 million per year in Alaska to support his family – he had previously supported his family very well on annual earnings of about \$1.5 million at Valley Medical. RP 148-50, 684, 791-92. He does not claim that after he moved his practice to Alaska, his family’s expenses increased by over \$4 million – or even at all. BA 10-12.

Dr. Wright was spending most of his earnings on real property, airplane hangars, and businesses. BA 12-13. For example, in February 2010, Dr. Wright entered a purchase and sale agreement for an \$800,000 waterfront house in Anchorage. RP 815-16, 1001-02; Ex 30. He intended to live there, but before closing, Dr. Wright learned that it was going to take too long to complete his planned remodel, so he purchased a nearby

waterfront home for nearly \$1,500,000, on the spur of the moment. *Id.* These purchases, totaling \$2.3 million, closed within a week of each other. *Id.*

In all, after moving his practice to Alaska, Dr. Wright purchased \$10 million in real property, either in his name, or in the names of corporations he formed: Moriarty Enterprises, LLC, and Southside LLC and Wright Bothers LLC:

- ◆ A rental home for \$800,000;
- ◆ A second rental home for \$330,000;
- ◆ His residence for \$1.5 million;
- ◆ A satellite office building for \$290,000;
- ◆ Three airplane hangars, totaling \$890,000;
- ◆ A 14-acre farm parcel for \$1.15 million;
- ◆ A commercial property in California for \$829,000; and
- ◆ A “Borders” bookstore building for \$4.324 million.

RP 799, 1001-04, 1006-07; Exs 30, 296. Dr. Wright also purchased two aircraft. RP 595, 996. In all, he owns four aircraft, worth more than \$500,000, and he rented a fifth airplane on an hourly basis. RP 996; Ex 31.

At the same time, Dr. Wright asked Mary to “cut back.” RP 574-75. And he asked Mary to get a job “so she could feel ‘what it was like to pull the plow’ or to have some ‘skin in the game.’” BA 12 (quoting RP 953, 970). Dr. Wright does not feel that being a

“full-time mother of eight” is “being strapped to the harness.” RP 970. Their youngest two children were still in high school, and Mary was effectively a single mom much of the time. RP 953, 970. Mary “declined.” BA 12.

H. Procedural history.

The parties went to trial in May 2012, at which time Mary was 60-years old, and Dr. Wright was 59-years old. CP 248, 250, FF 4 & FF 5. They stipulated to a parenting plan and to property values for most of the assets. RP 4-5; CP 8-9, 10-12; Exs 30, 31.³ The issues before the trial court were maintenance, child support, and the distribution of assets.

The Honorable William Downing began his careful findings with this thoughtful comment (CP 249, FF 1):

Although every court case is unique, one can't help but observe that in many respects this is the archetypal long-term marriage in which the wife was a stay-at-home mother raising the couple's eight children while the husband worked hard and commanded a high salary, eventually straying from his marriage vows leading the wife to reluctantly bring an action to dissolve their marriage. This action requires of the court that it set aside types (of all types) and examine the unique circumstances – past, present and future – of each of the parties and determine a fair and equitable division of their marital estate.

³ Dr. Wright does not appeal from the values the court assigned to the family home, the only asset values the parties did not stipulate to before trial. BA 2, BA App A at 255.

Judge Downing found that the parties separated after a 30-plus-year marriage when Mary petitioned for dissolution in April 2011, not when Dr. Wright moved his practice to Alaska or announced his affair. CP 249, FF 2; CP 250, FF 6. Judge Downing characterized as community property the pre-separation income Dr. Wright earned in Alaska and the property he acquired there. CP 260-64. The total estate was approximately \$18.2 million, one million of which was Dr. Wright's separate property earned after separation. CP 260-64, 268, 269; Exs 332, 333.

Judge Downing divided the community assets 60/40, awarding Mary \$10,226,834 – \$8,526,834 in community property and a \$1.7 million equalizing payment. CP 238-243. Judge Downing awarded Dr. Wright \$7,937,638 – \$8,657,672 in community property and \$979,966 in separate property, less the \$1.7 million equalizing payment. CP 64-65, 238-43; Exs 36, 332, 333.⁴

⁴ Dr. Wright's separate property award includes \$149,999 in ANA's Cash Value Plan (\$469,087 total value minus \$319,088 community property); \$33,000 in ANA's Profit Sharing Plan (\$61,791 total value minus \$28,791 community property); \$757,613 in Northrim Bank Account # 0752 (\$770,759 total value minus \$13,146 community property); and \$59,343 in Northrim Bank Account # 0794 (\$114,997 total value minus 55,643 community property), totaling \$999,966.

Dr. Wright complains at some length that Judge Downing awarded Mary significantly more “liquid assets.” BA 23-25. This is true in large part because Dr. Wright asked for and received his four airplanes, his surgical practice, and all the real property he acquired after moving his practice to Alaska. RP 817, 818, 835.

Judge Downing found that although Dr. Wright cut back his surgical practice by about one-third, he “quadrupled his income” to an average annual income around \$5 million. CP 230, FF 8. This increase was due to the medical reimbursement rates in Alaska. *Id.* After considering Dr. Wright’s “nagging wrist injury and cataracts,” as well as other claims that he could not or would not continue to work, Judge Downing found that Dr. Wright will continue to work for at least two and one-half more years, earning not less than \$4 million annually, for total post-decree earnings of at least \$10 million. CP 228, FF 5; CP 232, FF 12. Of that amount, Dr. Wright was ordered to pay Mary \$1 million in maintenance over three years. CP 236-37, CL 6, 9. Judge Downing noted that Dr. Wright’s post-dissolution earnings will easily even out the disparate property award and the maintenance award. *Id.*

Dr. Wright appealed. CP 193-243. Mary cross appealed, but now voluntarily dismisses her cross appeal, filing a motion to dismiss along with this brief.

ARGUMENT

A. Standards of review.

In dissolution proceedings, the trial court has broad discretion to make a just and equitable property distribution based on the factors enumerated in RCW 26.09.080. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242–43, 170 P.3d 572 (2007), *rev. denied*, 163 Wn.2d 1055 (2008); *In re Marriage of Luckey*, 73 Wn. App. 201, 209-10, 868 P.2d 189 (1994). This Court will reverse only upon a showing of a manifest abuse of discretion. *Marriage of Buchanan*, 150 Wn. App. 730, 735, 207 P.3d 478 (2009). A trial court abuses its discretion if its decision is manifestly unreasonable, meaning that its decision is outside the range of acceptable choices, or is based upon untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997). This Court affirms all findings supported by substantial evidence, “evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Rockwell*, 141 Wn.

App. at 242 (quoting *In re Marriage of Griswold*, 112 Wn. App 333, 339, 48 P.3d 1018 (2002)).

A trial court does not abuse its discretion by awarding separate property if the distribution is just and equitable. *In re Marriage of Irwin*, 64 Wn. App. 38, 48, 822 P.2d 797 (1992); see, e.g., *Griswold*, 112 Wn. App at 346 (affirming distribution awarding wife 50 percent of community property and a percentage of husband's separate property); *In re Marriage of Konzen*, 103 Wn.2d 470, 472, 478, 693 P.2d 97 (1985) (affirming distribution awarding wife 50 percent of community property and 30 percent of husband's separate property) *cert. denied*, 473 U.S. 905 (1985); *Ramsdell v. Ramsdell*, 47 Wash. 444, 445–46, 92 P. 278 (1907) (affirming distribution awarding the wife 100 percent of the husband's separate property). A division of property need not be equal, but just and equitable, depending on both parties' circumstances at the time of dissolution. RCW 26.09.080.

Maintenance awards and property distributions work in conjunction with one another – “[t]he trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property.” *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929

P.2d 500 (1997). The trial court has broad discretion to award maintenance based on the factors enumerated in RCW 26.09.090. ***In re Marriage of Bulicek***, 59 Wn. App. 630, 633, 800 P.2d 394 (1990). Maintenance is “a flexible tool by which the parties’ standard of living may be equalized for an appropriate period of time.” ***In re Marriage of Washburn***, 101 Wn.2d 168, 179, 677 P.2d 152 (1984). “The only limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just.” ***Bulicek***, 59 Wn. App. at 633.

B. The property distribution was well within Judge Downing’s broad discretion, where Mary has not worked outside of the home for 25 years, and Dr. Wright will continue to work for 2.5 years, earning not less than \$4 million per year. BA 26-33.

1. The trial court awarded Dr. Wright “illiquid” assets because he spent \$10 million on real property and airplanes during the last years of the marriage and asked to keep those assets. BA 26-31.

Dr. Wright’s argument is essentially a series of attacks on the proposition that when a trial court dissolves a marriage of 25-years or more – a “long-term marriage” – it should use the property distribution and maintenance award to place the parties in “roughly equal financial positions.” BA 27-31 (quoting Winsor, “*Guidelines for the Exercise of Judicial Discretion*,” WASHINGTON STATE BAR NEWS at 16 (January 1982); ***Rockwell***, 141 Wn. App. at 248-249).

Dr. Wright's current argument contradicts the position he took before the trial court that in dissolving a long-term marriage, putting the parties in similar financial circumstances "must be of 'paramount concern' to the Court." CP 88 (citing *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 433 P.2d 209 (1967)).

Dr. Wright acknowledges that the "justification" for a disproportionate property award is that the higher earning spouse "will continue to work for several more years [and] 'catch up' to the other spouse." BA 28. That being so, the property distribution and maintenance award are entirely justified in this case. Indeed, Dr. Wright receives the advantage.

The maintenance award totals \$1,080,000, and the trial court awarded Mary assets valued at \$2,289,196 more than the assets awarded to Dr. Wright, a total of \$3,369,196. CP 260-64.⁵ Thus, Dr. Wright needs to earn \$3,369,196 to "catch up." BA 28. The trial court correctly found that Dr. Wright will continue to work for about 2.5 more years, earning at least \$10 million. CP 254, FF 12. In just 2.5 years, Dr. Wright will more than "catch up" to Mary, he

⁵ Assets awarded to Mary totaled \$10,226,834, and assets awarded to Dr. Wright totaled \$7,937,638.

will surpass her by nearly \$2.7 million: $\$10,000,000 \times .396$ (tax bracket) = $\$6,040,000 - \$3,369,196 = \$2,670,804$.⁶

In short, under Dr. Wright's own standard, the maintenance award and property distribution are more than fair. This Court need not consider the remainder of Dr. Wright's argument, which simultaneously criticizes and relies upon Judge Winsor's article and this Court's decision in *Rockwell*, 141 Wn. App. 235.

Dr. Wright takes issue with Judge Winsor's statement that a court dissolving a long-term marriage should place the parties in "roughly equal financial positions," arguing that "nothing in RCW 26.09.080, which governs property distributions on dissolution of marriage, requires" such a result. BA 26. But he paradoxically accepts this Court's decision in *Rockwell*, that where, as here, the trial court dissolves a long-term marriage, its goal is to place the parties in "roughly equal financial circumstances." BA 29, 141 Wn. App. at 248-49.

In any event, the point of Judge Winsor's article is simply to "lay down some general principles" for applying RCW 26.09.080 (property distribution) and 26.09.090 (maintenance), to assist trial

⁶ This number could certainly be more, as Mary's maintenance is taxable to her and deductible by Dr. Wright, and the 39.6% tax rate would apply to Dr. Wright's taxable income, not to the entire \$10 million.

judges exercising their “very broad discretion.” *Supra, Winsor*, at 15. Judge Downing used Judge Winsor’s article exactly how it was intended – as guidance – not as an imperative usurping the trial court’s broad discretion (CP 257, CL 4):

In effecting this division, the Court has been guided by RCW 26.09.080 and has considered all relevant factors about the parties’ circumstances in arriving at a result it deems just and equitable. In his oft-cited 1982 *Bar News* article, Judge Robert Winsor suggested that, in dissolving a long range marriage such as this one, the court’s goal should be to place the parties in roughly equal financial positions for the rest of their lives. Although this “suggestion” was accurately characterized as such in the WSBA’s Washington Family Law Deskbook, that latter source has been cited by at least one appellate court in stating the proposition as an imperative. In any event, this Court views itself as having discretion and as having exercised it.

Dr. Wright also argues that Judge Winsor “contemplated” “roughly” equalizing the post-dissolution economic circumstances only if (1) both spouses would be “working to their ‘reasonable capacities’”; and (2) the lower-earning spouse would be awarded “maintenance *or* more property, but not both.” BA 27-28 (emphasis in original). But the very case Judge Winsor discussed in his analysis plainly contradicts Dr. Wright’s theory that a trial court may award a disadvantaged spouse more property or maintenance, but not both. *In re Marriage of Rink*, 18 Wn. App. 549, 571 P.2d 210 (1977) (awarding wife two-thirds of the marital property and one-

year of maintenance). More cases than can be counted affirm disproportionate property distributions in conjunction with maintenance, including *Washburn*, which announces the oft-cited rule that trial courts may use property distributions and maintenance awards flexibly to achieve a just and equitable result. *Washburn*, 101 Wn.2d at 178-79.

Washburn also plainly contradicts Dr. Wright's argument that only a spouse who is "working to [her] 'reasonable capacit[y]'" may be awarded maintenance (BA 27):

... [U]nder the extremely flexible provisions of RCW 26.09.090, a demonstrated capacity of self-support does not automatically preclude an award of maintenance. Indeed, the ability of the spouse seeking maintenance to meet his or her needs independently is only *one* factor to be considered. RCW 26.09.090(1)(a). The duration of the marriage and the standard of living established during the marriage must also be considered, making it clear that maintenance is not just a means of providing bare necessities, but rather a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time. RCW 26.09.090(1)(c), (d).

101 Wn. 2d at 178-79 (emphasis in original). In any event, Mary's earning capacity at the time of dissolution was minimal at best – she was 60 years old and had not worked outside the home for 25 years. CP 250, FF 4. By contrast, Dr. Wright's earning capacity is incredible – he will earn at least four million dollars per year, for at least another few years. CP 250, FF 5; CP 254, FF 12. He will

earn \$10 million and pay Mary \$1 million. *Id.* It is absurd to suggest that the trial court could not award Mary maintenance unless she got a job.

Dr. Wright's claim that "he will never be able to overcome the disparity in the division of assets" is as incorrect as it is unsupported. BA 30. Again, Dr. Wright's net worth will surpass Mary's by at least \$2.8 million in just 2.5 years. His suggestion that he will have to work another "five or ten more years" is simply false. BA 30.

Finally, Dr. Wright's complaint that the trial court awarded him "illiquid" assets is not well-taken. BA 29-31. In the last few years of the marriage, Dr. Wright used community funds to acquire real property, aircraft, business investments, and rental properties together worth \$10 million. *Supra*, Statement of the Case, § G. As discussed below, Dr. Wright asked for and was awarded those assets. *Infra*, Argument § B 2. He cannot now complain about getting everything he asked for.

2. The equalizing payment does not "invade" separate property; it permits Dr. Wright to keep the assets he requested. BA 31-34.

Dr. Wright next argues that the trial court abused its discretion in awarding Mary an equalizing judgment, where he must

pay it from “separate property – his post-dissolution earnings.” BA 31. But once a decree of dissolution is entered, all property of the former spouses becomes their separate property, as the community ceases to exist. Thus, all equalizing judgments (and all maintenance awards) will necessarily be paid from separate property. Adopting Dr. Wright’s argument would severely constrain our trial courts’ ability to fashion just and equitable property distribution and maintenance awards.

Trial courts commonly use equalizing judgments when it is not otherwise possible to “conveniently effectuate” a just and equitable distribution of assets:

In making a property division, it is not always possible to conveniently effectuate a “present allocation of property to each party, and in a proper case, the property may be awarded to one with a duty to make compensating payments to the other, ...”

In re Marriage of Young, 18 Wn. App. 462, 465-66, 569 P.2d 70 (1977) (quoting ***Thompson v. Thompson***, 82 Wn.2d 352, 357-58, 510 P.2d 827 (1973)). Here, in addition to other community assets, Dr. Wright asked the trial court to award him the vast majority of the community assets he acquired in Alaska, including his home and several income-producing properties, his four aircraft, his medical practice, and his business investments, with a combined net value

exceeding \$7.75 million. CP 238-43; RP 817, 818, 835. The trial court gave Dr. Wright what he asked for, using an equalizing judgment to accomplish a fair award to Mary. CP 238-43.

The trial court could have avoided the equalizing judgment by awarding Dr. Wright's home, his aircraft, or his rental properties to Mary. It is doubtful that Dr. Wright would like that result either.

Dr. Wright misplaces reliance on *In re Marriage of Holm*, ignoring that *Holm* was decided under former Rem. Rev. Stat. § 989, permitting trial courts to place more weight on the character of an asset than on any other factor relevant to the distribution. BA 32-33 (citing *In re Marriage of Holm*, 27 Wn.2d 456, 464, 178 P.2d 725 (1947) (reversing a separate property award to the wife, holding that the court was not "constrained to take from the husband his separate property" "to make adequate provision for the necessitous condition of the wife"). More recently, our Supreme Court has been abundantly clear that the character of an asset, while relevant to the distribution, is not controlling:

This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors. The statute directs the trial court to weigh all of the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of property. The

character of the property is a relevant factor which must be considered, but is not controlling.

Konzen, 103 Wn.2d at 478 (affirming an award to the wife of 50% of the community property and 30% of the husband's separate property). The **Konzen** Court disapproved **Bodine v. Bodine**, in which the Court held that one spouse's separate property may be awarded to the other spouse only in "exceptional" situations. 103 Wn.2d at 477 (citing **Bodine v. Bodine**, 34 Wn.2d 33, 35, 207 P.2d 1213 (1949)). **Konzen** explains that **Bodine** (like **Holm** upon which **Bodine** relied) was decided under Rem. Rev. Stat. § 989. **Konzen**, 34 Wn. 2d at 35. Following **Konzen**, and the revision of Rem. Rev. Stat. § 989 in 1949, **Bodine** and **Holm** are no longer good law.

Dr. Wright's reliance on **Stokes v. Polley** is equally misplaced. BA 32-33 (citing 145 Wn.2d 341, 347, 37 P.3d 1211 (2001)). The issue in **Stokes**, a quiet title and partition action, was whether the wife's award in the decree of "one-half of the equity" in the husband's separate real property was an award of a one-half ownership interest in the acreage, or a monetary award, the enforcement of which was barred by the statute of limitations. 145 Wn. 2d at 344. **Stokes** is plainly inapposite.

In *dicta*, **Stokes** states that “Washington courts refrain from awarding separate property of one spouse to the other if a just and equitable division is possible without doing so.” *Id.* at 347. Judge Downing did not award Mary Dr. Wright’s separate property – he awarded Dr. Wright his separate property income earned after Mary filed for dissolution, nearly \$1 million. CP 238-43; Exs 332, 333. This brought Dr. Wright’s total property award to 45% of the assets before the court for distribution. *Id.* And in keeping with **Stokes**, Judge Downing plainly and correctly concluded that it was not possible to equitably distribute the assets without awarding Mary an equalizing judgment.

In sum, the trial court was well-within its broad discretion in awarding Mary 60% of the community assets after a 30-plus-year marriage, where Dr. Wright’s earnings will easily outstrip the distribution and maintenance award in just 2.5 years.

C. Judge Downing “recognized” the nature of the assets he awarded Dr. Wright. BA 34-41.

Dr. Wright argues that Judge Downing actually awarded him considerably less community property than he intended to, relying on a chart attached to his brief. BA 34 (citing App. C). That chart removes from Dr. Wright’s property award all assets he claims for

the first time on appeal to be his separate property, under the theory that the marriage was defunct sometime before Mary filed for dissolution. *Id.* Ample evidence supports Judge Downing's finding on the date of separation. CP 227, FF 2; CP 229, FF 6. Thus, the property award accomplishes exactly what Judge Downing intended – a 60/40 distribution of community property. This Court should affirm.

1. This Court should decline to consider Dr. Wright's new argument that part of ANA's accounts receivable are separate property.

Dr. Wright claims, for the first time on appeal, that some of ANA's accounts receivable are his separate property. BA 35. Neither Dr. Wright, nor the two medical practice valuation experts testified about the character of the accounts receivable. See *e.g.*, RP 69, 83-85, 193, 918. Dr. Wright did not claim in his trial brief or other pleadings that these accounts receivable were his separate property. CP 83-85; 140-43, 161-89. This Court should decline to consider this new argument. RAP 2.5(a).

Moreover, Dr. Wright waived this argument in his closing statement, in which counsel listed the assets Dr. Wright considered to be his separate property, but did not list ANA's accounts receivable. RP 1127-30. Even after Judge Downing specifically

asked counsel to list every asset Dr. Wright claimed as separate property, she reviewed the asset spreadsheet, and listed a few more assets, but not ANA's accounts receivable. RP 1127-1130.⁷ Again, this Court should decline to consider this argument.

2. The trial court properly applied Washington law.

Mary agrees that there is an “actual conflict” between Washington and Alaska law: Alaska law prohibits trial courts from distributing goodwill if it is not marketable, while Washington permits courts to distribute goodwill even when it is not “readily marketable.” BA 36 (quoting *In re Marriage of Lukens*, 16 Wn. App. 481, 482, 558 P.2d 279 (1976), *rev. denied*, 88 Wn.2d 1011 (1977) and citing *Moffitt v. Moffitt*, 749 P.2d 343, 347 (Alaska 1988)). Dr. Wright argues that Judge Downing erroneously applied Washington law, and as a result that “the trial court in fact awarded the wife \$219,600 more than she would have received had goodwill been properly excluded.” BA 38. Judge Downing properly applied Washington law, where Washington plainly has the “most

⁷ This is consistent with exhibit 359, Dr. Wright's asset spreadsheet, which lists ANA's accounts receivable as community property. Dr. Wright sent exhibit 359 to Judge Downing via letter, but did not have it admitted at trial, despite repeatedly referring to it during his testimony. RP 803-04, 807-08, 817-20, 822, 831-36, 839-43, 854-56, 861-66, 870-71. Mary appends exhibit 359 to this brief and files a RAP 10.3(a)(8) motion for permission to do so, following the same procedure Dr. Wright followed in the opening brief.

significant relationship” to the cause of action, the parties, and the asset in question. **Seizer v. Sessions**, 132 Wn.2d 642, 650, 940 P.2d 261 (1997).

To determine which state has the “most significant relationship,” the court must consider:

- (a) The needs of the interstate and international systems,
- (b) The relevant policies of the forum,
- (c) The relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) The protection of justified expectations,
- (e) The basic policies underlying the particular field of law,
- (f) Certainty, predictability and uniformity of result, and
- (g) Ease in the determination and application of the law to be applied.

Seizer, 132 Wn.2d at 650-52 (quoting Restatement (Second) Conflicts of Law § 6(2)). Dr. Wright addresses only factors (c) and (d). BA 37-38.

Dr. Wright argues that the policy underlying Alaska law prohibiting the distribution of goodwill is that distribution could restrict the spouse's “liberty” to take opportunities such as returning to school that might reduce his income. BA 37 (quoting **Moffit**, 749 P.2d at 347 n.3). There is no such concern here. The total

goodwill in ANA was \$366,000, \$219,600 of which went to Mary's credit in the trial court's 60/40 division of community property. CP 173; BA 38. Dr. Wright will net this much money in about five weeks of work – he cannot seriously suggest that awarding Mary \$219,600 of goodwill is restricting his "liberty." BA 37.⁸

Dr. Wright's only other "most significant relationship" argument challenges Finding 10, which explains that Washington policy outweighs Alaska policy:

In this court's view, Washington's policy interests in consistency and in protecting the financial expectations of these parties are substantial and outweigh the speculative interest of Alaska in not restricting the economic liberty of a divorcing professional spouse in these unusual circumstances.

CP 253, FF 10. Dr. Wright claims that the parties did not have a "financial expectation" in ANA's goodwill, arguing that he relocated to Alaska not to work at ANA, but to work at Alaska Native, where he would have no goodwill. BA 37-38.

But Dr. Wright acknowledged that he made plans to open ANA before moving to Alaska. RP 792, 973. Mary also testified that Dr. Wright never intended to work only at Alaska Native and

⁸ Assuming Dr. Wright's annual income drops from \$5.5 million to \$4 million after entry of the Decree, his monthly gross income would be \$333,333. Subtracting the \$30,000 monthly maintenance award and then applying a 39.6% tax bracket leaves Dr. Wright a net monthly income of \$183,213.

that the “plan” had always been to open ANA. RP 577. The parties plainly had a “financial expectation” in ANA, a practice which both experts agree has goodwill. RP 646; CP 106.

In short, the parties lived the vast majority of their 30-plus-year marriage in Washington. Washington law is more protective of Mary, and the policies underlying Alaska law do not apply. Judge Downing correctly applied Washington law.

3. The court correctly ruled that the parties’ marriage was not defunct until Mary filed for dissolution, and therefore that the assets acquired in Alaska are community property. BA 38-40.

For several years, Dr. Wright practiced in Alaska while returning to his wife, children, and family home twice a month, often for extended periods. *Supra*, Statement of the Case § D. Dr. Wright’s 2010 infidelity did not *sua sponte* terminate the parties’ marriage. BA 38-40. Even after Dr. Wright’s girlfriend gave birth to his child in January 2011, he took no steps to end the marriage, stating that “it was just easier to do nothing.” RP 768. Judge Downing was well-within his broad discretion in finding that the marriage was not defunct until Mary filed for dissolution in April 2011. CP 249, FF 2.

Although our courts presume that all income and assets obtained during a marriage are community property, income and assets obtained when a marriage is “defunct” are the separate property of each spouse under RCW 26.16.140. ***Aetna Life Ins. Co. v. Bunt***, 110 Wn.2d 368, 372, 754 P.2d 993 (1988). Physical separation does not establish that a marriage is defunct. ***Aetna v. Bunt***, 110 Wn.2d at 372. Rather, “[t]he test is whether the parties by their conduct have exhibited a decision to renounce the community, with no intention of ever resuming the marital relationship.” ***In re Marriage of Nuss***, 65 Wn. App. 334, 344, 828 P.2d 627 (1992) (holding marriage not defunct though wife had obtained a domestic violence protection order, where parties had not shown they had no intention of ever resuming marital relationship) (quoting ***Oil Heat Co. v. Sweeney***, 26 Wn. App. 351, 354, 613 P.2d 169 (1980)); *see also* ***In re Marriage of Terry***, 79 Wn. App. 866, 870, 905 P.2d 935 (1995) (holding that marriage not defunct, where parties lived in separate bedrooms for 21 years, had no children, no sexual relations, no joint bank accounts, and seldom did things together).

Put another way, a marriage is defunct when “the deserted spouse accepts the futility of hope for restoration of the normal

marital relationship.” *In re Marriage of Short*, 125 Wn.2d 865, 871, 890 P.2d 12 (1995). Thus, a marriage is defunct only when both spouses have accepted that the marriage is over – “mutuality” is required. *Seizer*, 132 Wn.2d at 659.

When spouses have not instituted dissolution proceedings, this Court will “presume[]” that the marriage is intact “except under the most unusual circumstances.” *Aetna Life Ins. Co. v. Boober*, 56 Wn. App. 567, 572, 784 P.2d 186 (1990). In *Aetna v. Boober*, the husband moved to California, both parties had extra-marital affairs, and the wife had a child fathered by another man. 56 Wn. App. at 568-69. Despite the mutual infidelity, this Court affirmed the trial court’s decision that the marriage was not defunct, where the parties did not pursue a dissolution, “continued to interact positively,” and provided “emotional support and comfort to each other.” *Id.* at 569.

Despite his infidelity, Dr. Wright took no legal steps to end the marriage. RP 768. This gives rise to a presumption that the marriage was intact. *Aetna v. Boober*, 56 Wn. App. at 572. Unfortunately, as Judge Downing correctly noted, it is not “most unusual” for one spouse to cheat. 56 Wn. App. at 572; CP 249, FF

1. Thus, Dr. Wright's infidelity does not rebut the presumption that the marriage was intact. **Aetna v. Boober**, 56 Wn. App. at 572.

Although Dr. Wright testified that he "considered" the parties to be separated when he moved to Alaska, he "did not pursue" this issue at trial. RP 1127. He seems to abandon this claim on appeal, providing no argument whatsoever that the marriage was "defunct" in November 2007. RP 763; BA 39. At trial, Dr. Wright's conduct – returning to the family home twice monthly, taking family trips with Mary, giving Mary broad powers of attorney, and celebrating wedding anniversaries with her – shows an intact marriage, not a mutual "decision to renounce the community." **Nuss**, 65 Wn. App. at 344.

Regardless of what Dr. Wright supposedly "considered" but never manifested, Mary specifically testified that the parties made no "decision to renounce the community" when Dr. Wright announced his affair. **Nuss**, 65 Wn. App. at 344; RP 500. Rather it was not until April 2011, after a long and difficult process, that Mary accepted the "futility of hope." RP 500; **Short**, 125 Wn.2d at 871.

4. The trial court did not ignore malpractice claims against Dr. Wright, but adopted a valuation for his business that was discounted based on these claims.

Dr. Wright incorrectly claims that the trial court failed to consider a pending medical malpractice action when distributing the parties' assets. BA 40. During the dissolution, there were two medical malpractice claims pending against Dr. Wright. RP 892-93. One was tried, resulting in a defense verdict. RP 898. The expectation was that any judgment resulting from the second claim would be within Dr. Wright's malpractice insurance limits. RP 183.

In any event, Dr. Wright's appraisal of his surgical practice took both of these lawsuits into account, by assigning a very low value, \$366,000, to Dr. Wright's professional goodwill. Ex 202 at 3.⁹ The trial court adopted Dr. Wright's appraisal. CP 255, FF 13. Thus, the property distribution plainly takes this malpractice action "into consideration." BA 40. This Court should affirm.

D. Maintenance is appropriate after a 30-plus-year marriage, where Dr. Wright will earn about \$10 million during the three-year maintenance term. BA 41-49.

1. Judge Downing properly considered the RCW 26.09.090 factors.

Trial courts have broad discretion to use maintenance awards as "a flexible tool by which the parties' standard of living

⁹ Mary's expert testified that ANA's goodwill was \$7,294,958. RP 71.

may be equalized for an appropriate period of time.” **Washburn**, 101 Wn.2d at 179. “The only limitation” is that the overall award, maintenance and property, must be just. **Bulicek**, 59 Wn. App. at 633. This Court should affirm.

Dr. Wright’s argument that the maintenance award is an abuse of discretion is based on the outdated premise that maintenance is meant only to fill a financial “need,” not to balance an inequity in the parties’ post-dissolution economic circumstances. BA 41 (quoting **In re Marriage of Foley**, 84 Wn. App. 839, 845-46, 930 P.2d 929 (1997)). He argues that the disproportionate property award “obviate[s] the need for spousal maintenance.” BA 42 (quoting **In re Marriage of Wright**, 78 Wn. App. 230, 238, 896 P.2d 735 (1995)). And he argues that maintenance is intended to support a disadvantaged spouse only until she becomes self-supporting. BA 43 (quoting **Luckey**, 73 Wn. App. at 209).

But RCW 26.09.090, first enacted in 1973, provides that the court may order maintenance “in such amounts and for such periods of time as the court deems just” after consideration of “all relevant factors,” including:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her

ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

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

Under prior law, "alimony" was based solely on one spouse's need and the other spouse's ability to pay:

The criterion adopted by this court for the allowance of alimony includes two factors: (1) the necessities of the wife, and (2) the financial ability of the husband.

Morgan v. Morgan, 59 Wn.2d 639, 643, 369 P.2d 516 (1962). Dr.

Wright essentially asks this Court to revert to pre-1973 law.¹⁰

But it has long been the law that maintenance is not intended just to provide "bare necessities." ***Washburn***, 101 Wn.2d

¹⁰ Dr. Wright's reliance in ***Cleaver v. Cleaver*** is equally misplaced, as ***Cleaver*** was decided under the old statute. BA 44-45 (quoting 10 Wn. App. 14, 20, 516 P.2d 508 (1973)).

at 178-79. A spouse's ability to meet her needs without maintenance is only one factor for the court to consider when awarding maintenance. 101 Wn.2d at 178-79. The court must also consider, among other things, the duration of the marriage and the standard of living established during the marriage. *Id.*

Indeed, this Court has long recognized that when considering maintenance and property awards, the trial court's "paramount concerns" are the parties' standard of living during the marriage and their post-dissolution "economic condition." *In re Marriage of Sheffer*, 60 Wn. App. 51, 57, 803 P.2d 817 (1990). The facts in *Sheffer* are remarkably similar to this matter: the parties were married for 30 years, the wife did not work for most of the marriage, the community substantially benefited from the husband's career, and the wife "provided the services needed by the community to function as a family." 60 Wn. App. at 52, 57. There too, the trial court awarded the wife 60% of the parties' assets and three years of maintenance. *Id.* at 53. This Court reversed the maintenance award, unconvinced that the trial court adequately considered the standard of living during the marriage and the post-dissolution economic circumstances. *Id.* at 57-58.

In short, Dr. Wright is simply incorrect in asserting that the maintenance award is beyond the court's broad discretion because it is not necessary for Mary's financial survival or rehabilitation. BA 41-44. But in any event, it is simply inaccurate to suggest that Mary's standard of living will improve as a result of the dissolution. BA 44. Dr. Wright argues that the property and maintenance award give Mary a "better" standard of living, where maintenance, investment income, and interest combined should exceed Mary's monthly expenses by about \$7,000 per month. BA 44. But it is not new that the parties have more income than they spend each month. This was not a family that lived paycheck-to-paycheck.

Judge Downing also had the discretion to award Mary sufficient property and maintenance to allow her to keep the family home for "two or three" more years. BA 44-45; CP 255, FF 15. Dr. Wright is offended by this award, arguing that giving Mary the resources to keep the house for two or three years is "akin to awarding the home to the children or to providing support for adult independent children, both of which are prohibited." BA 45 (citing ***Sutherland v. Sutherland***, 77 Wn.2d 6, 9, 459 P.2d 397 (1969); RCW 26.09.170(3)). Allowing Mary and the parties' two youngest children (ages 17 and 18 at the time of trial) to stay in the family

home for a few years, is not “akin” to ordering Dr. Wright to support adult independent children. BA 45. The youngest children will still be in college and dependent upon the parties when maintenance terminates.

Mary and the parties’ eight children were understandably surprised and upset by Dr. Wright’s announcement that he had fathered a child outside of the parties’ 30-plus-year marriage. Judge Downing was well-within his broad discretion in finding that “[u]ntil the majority of the parties’ [8] children are fully settled on their own, it will be beneficial that the familiar family home remain available for their occasional use.” CP 255-56, FF 15.

Dr. Wright next argues that the duration of the marriage is alone insufficient to support the maintenance award. BA 45-46. But there is no indication whatsoever that the maintenance award was based solely on the duration of the marriage. Judge Downing considered all of “the factors enumerated in RCW 26.09.090, as well as the flexibility encouraged in In re: Marriage of Washburn.” CP 258, CL 6. He was well aware of this Court’s holding in *Rockwell, supra*, that a trial court dissolving a long-term marriage must equalize the parties’ post-dissolution financial circumstances,

but nonetheless stated, “this Court views itself as having discretion and as having exercised it.” CP 257, CL 4.

Finally, Dr. Wright argues that the maintenance award is an abuse of discretion where Mary could work “if she chose to,” and/or where Dr. Wright is now at retirement age. BA 46. Mary is 60 years-old and has not worked outside the home in 25 years. CP 250, FF 4. Mary left lucrative employment, “[t]aking on substantial obligations in raising her large family – a successful pursuit to which she contributed immeasurably.” *Id.* To use Dr. Wright’s words, Mary had “skin in the game.” RP 1036-37.

Although Dr. Wright carries on at some length about his desire to sip coffee and read the paper, he does not argue that there is insufficient evidence to support the trial court’s finding that he will continue to work for at least another 2.5 years, earning \$4 million per year. CP 254, FF 12. Nor could he – there is ample evidence that Dr. Wright will continue working:

- ◆ In May 2011, Dr. Wright submitted a declaration stating that he loved medicine and wished to continue to work as a physician. Ex 26.
- ◆ Dr. Wright twice declared that when he can no longer work as a physician, he will open a pain clinic in Anchorage to treat patients with chronic neck and back pain. Ex 26 at 3; Ex 29 at 5.

- ◆ In May 2011, Dr. Wright purchased a \$4.3 million office building to house his pain clinic, violating court-ordered financial restraints. CP 26. The court denied Mary's motion for an order requiring Dr. Wright to rescind the offer based on Dr. Wright's long-term plans for the building. CP 27.

Dr. Wright's assertion that he cannot pay maintenance and meet his financial obligations is incredible. BA 46-47. Dr. Wright's property award has a net value of \$8 million, and he will earn at least \$10 million in the first 2.5 years after the dissolution. *Supra*, Argument B. After his obligations to Mary, he will have at least \$2.8 million more than she does when the three-year maintenance term is over. *Id.* If he continues working as a surgeon or follows through on his pain-clinic, he will earn many more millions of dollars. Dr. Wright's need to support his "young son" does not change his obligations to the family he had for over 30 years. BA 46.

2. Judge Downing did not place undue emphasis on the fact the Mary earned more than Dr. Wright during the first few years of the parties' marriage. BA 47-49.

Dr. Wright claims that in awarding maintenance Judge Downing "relied on the fact that [Mary] was 'probably the greater breadwinner' during the first few years of the marriage." BA 48 (citing CP 250, FF 4). He argues that this conflicts with *Washburn's* holding that there are situations in which a spouse

who works to support the higher-earning spouse while he obtains his professional degree “may already have benefitted financially from the spouse’s increased earning capacity to an extent that would make extra compensation inappropriate.” BA 47-48 (citing **Washburn**, 101 Wn. 2d at 181). That is beside the point – Mary’s maintenance award is not an attempt to compensate her for supporting Dr. Wright through his residency, but an attempt to briefly lessen their grossly disproportionate earning capacities. CP 250-52, FF 4-8. This is entirely consistent with RCW 26.09.090 and **Washburn’s** oft-cited rule that maintenance is “a flexible tool by which the parties’ standard of living may be equalized for an appropriate period of time.” 101 Wn.2d at 179; CP 258, CL 6.

In any event, the financial benefit Dr. Wright’s degree conferred during the marriage pales in comparison to the benefit it has conferred in the past few years. Although Dr. Wright has always provided a very nice income for his family, it was not until he moved to Alaska in 2007 that he began earning around \$5 million per year. CP 251-52, FF 8. During the marriage, the parties grew to expect an annual income between \$1 million and \$1.5 million, in keeping with the average for neurosurgeons in the United States. *Id.* But when Dr. Wright moved to Alaska, he “actually reduced the

number of procedures he was doing by a third and, at the same time, quadrupled his income.” *Id.* That “incredible” increase “is attributable to the medical reimbursement rates utilized in Alaska by both private insurers and government entities. . . .” CP 252, FF 8. Judge Downing was well within his broad discretion in awarding Mary maintenance for three years to share in this “dramatic increase.” *Id.*

In sum, the three-year maintenance award is only 10% of the income Dr. Wright will earn during the maintenance term. Following the 30-plus-year marriage, this award is entirely just and equitable.

E. Dr. Wright will earn over \$4 million a year – he does not “need” an award of fees. BA 49.

Dr. Wright claims he needs Mary to pay his fees because he was awarded “limited liquid assets.” BA 49. Dr. Wright was awarded nearly \$1 million in cash, and will earn at least \$4 million per year, if not more. CP 172; Exs 332, 333. One would certainly hope that this is sufficient to pay his attorneys.

CONCLUSION

The property distribution and maintenance award are entirely just and equitable under the statutory factors, particularly where Dr. Wright's post-dissolution earnings will not only even out the disparity, but will significantly outstrip Mary's total award in just 2.5 years. This Court should affirm.

RESPECTFULLY SUBMITTED this 8th day of April, 2013.

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CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 8th day of April 2013, to the following counsel of record at the following addresses:

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WRIGHT Asset-Liability List

11-3-02992-5 SEA		As of Valuation Date				Disposition to Kim		Disposition to Mary	
Ref. #	Description	Date	Value	Encumbrance	Net Value	Community	Separate	Community	Separate
ASSETS									
Real Property									
1	Res, 6307 77th Ave. SE, Mercer Island	Alan Pope 4-12	\$ 4,900,000		\$ 4,900,000			\$ 4,900,000	
2	Condo, 14836 SE 16th, #T6, Bellevue	Stip 5-14-12	\$ 220,000		\$ 220,000			\$ 220,000	
3	80 acres, El Paso County, CO	Stip 5-14-12	\$ 137,500		\$ 137,500			\$ 137,500	
4	Res, 3608 North Point Dr, Anchorage	Stip 1-17-12	\$ 1,500,000		\$ 1,500,000	\$ 1,500,000			
5	Res, 4034 North Point Dr., Anchorage	Stip 1-17-12	\$ 800,000		\$ 800,000	\$ 800,000			
6	Condo, 2610 Kelsan Circle, Anchorage	Stip 1-17-12	\$ 330,000		\$ 330,000	\$ 330,000			
7	Hangar B3, 1931 Meridian Field, Anchorage	Stip 1-17-12	\$ 190,290		\$ 190,290	\$ 190,290			
Investments - Closely Held									
8	Alaska Neuroscience Associates LLC				\$ 1,048,205	\$ 1,048,205			
9	Goodwill	None							
10	Furnishings, equipment	Neil Beaton 4-12	\$ 60,000						
11	ANA Cash, Net Accts Rcvble	Neil Beaton 4-12	\$ 988,205						
12	Alaska Spine Institute Surgery Cntr LLC 2%	Capital Acct 2010	\$ 91,874		\$ 91,874	\$ 91,874			
13	Moriarity Enterprises LLC 100%				\$ 2,156,254	\$ 2,156,254			
14	Fireweed Lane rental, Wasilla	Stip 1-17-12	\$ 1,150,000						
15	Fireweed rental repairs - See NOTE 1	Estimated		\$ (42,364)					
16	Ace Hangars A1, A2, Anchorage	Stip 1-17-12	\$ 700,000						
17	Hangar maintenance - See NOTE 2	Estimated		\$ (21,000)					
18	Office, 3719 E. Meridian Loop #E, Wasilla	Stip 1-17-12	\$ 290,000						
19	Wells Fargo acct X 0635 Bus Checking	Online 5-5-12	\$ 78,618						
20	Wells Fargo acct X 9956 Bus MR Savings	Online 5-5-12	\$ 999						
21	Southside Development LLC 99%				\$ 91,947		\$ 91,947		
22	1100 E. Dimond (Borders), Anchorage	Stip 1-17-12	\$ 4,300,000						
23	Less Northrim Mortgage			\$ (3,187,500)					
24	Less Richard Armstrong Loan			\$ (1,057,000)					
25	Wells Fargo acct X 9752 Bus Svcs Pack	Pass Thru Acct 50	\$ -						
26	Wells Fargo acct X 6604 Bus MR Savings	Online 5-5-12	\$ 991						
27	Northrim X2160 Bus Checking	Stmt 2-29-12	\$ 35,456						
28	Wright Brothers LLC 50%				\$ 829,762	\$ 829,762			
29	11400 Highway 49, Martelle, CA	Stip 1-17-12	\$ 425,000						
30	NPV receivable re brother - SEE NOTE 3	Estimated	\$ 404,762						
31	Screenlife LLC	TBD	X		X	X		X	
32	Madrona Venture Fund I - SEE NOTE 4	Cap Acct 12-31-11	\$ 101,977		\$ 101,977			\$ 101,977	
33	Tully's Coffee Corp - 5,654 shares common	Tully's 2-29-12 est	\$ 1,550		\$ 1,550	\$ 775		\$ 775	
34	Intelogis - 133,333 shares preferred "D"	Cert 3-26-99	X		X	X		X	
35	Supergen, Inc.	TBD	X		X	X		X	
36	Multipoint Lighting - 43,860 shs pfd "A"	Cert 1-10-91	X		X	X		X	
37	Chip Shot Golf Corp - 38,265 shs preferred	Cert 8-25-00	X		X	X		X	
38	PeopleNet Communications - 12,500 shs "A"	Cert 1-8-99	X		X	X		X	
39	Door to Door Storage - 25,000 shs S4 "A" pfd	Cert 5-25-01	X		X	X		X	
Investments - Publicly Traded									
40	E-Trade Complete Savings X3997 (Joint)	Stmt 4-1-12	\$ 183,572		\$ 183,572			\$ 183,572	
41	E-Trade Investments X5611 (Joint)	Stmt 4-1-12	\$ 60,740		\$ 60,740			\$ 60,740	
42	E-Trade Investments X5750 (Joint)	Stmt 4-1-12	\$ 126,749		\$ 126,749			\$ 126,749	
43	E-Trade Investments X6636 (Joint)	Stmt 12-31-11	\$ 78		\$ 78			\$ 78	
44	Weitz Funds X 1273 (Joint)	Stmt 3-31-12	\$ 45,312		\$ 45,312			\$ 45,312	
45	MorganStanleySB Invstmnts X8254 (Joint)	Stmt 3-31-12	\$ 855,808		\$ 855,808			\$ 855,808	

WRIGHT Asset-Liability List

Ref. #	Description	Date	As of Valuation Date			Disposition to Kim		Disposition to Mary	
			Value	Encumbrance	Net Value	Community	Separate	Community	Separate
46	Charles Schwab X 1330 (Joint)	Stmt 3-31-12	\$ 38,700		\$ 38,700			\$ 38,700	
Retirement									
47	Alaska Neuroscience Cash Balance Plan (KW)	Stmt 12-31-10	\$ 469,087		\$ 469,087	\$ 159,544	\$ 150,000	\$ 159,544	
48	Alaska Neuroscience PSP (KW) vested bal	Stmt 12-31-10	\$ 41,791		\$ 41,791	\$ 28,791	\$ 13,000		
49	Alaska Native Pension Plan - Valic (KW)	Stmt 12-31-11	\$ 49,827		\$ 49,827			\$ 49,827	
50	American Funds X3048 IRA (MW)	Stmt 3-30-12	\$ 15,073		\$ 15,073			\$ 15,073	
51	MorganSSB X 4572 SEP IRA (KW)	Stmt 3-31-12	\$ 1,053,069		\$ 1,053,069			\$ 1,053,069	
52	Valley Medical 403(B) (KW)	Stmt 12-31-11	\$ 56,796		\$ 56,796			\$ 56,796	
53	Valley Medical 457(B) Deferred Comp (KW)	Stmt 12-31-11	\$ 56,246		\$ 56,246			\$ 56,246	
54	Valley Medical Employee Pension Plan (KW)	Stmt 12-31-11	\$ 32,401		\$ 32,401			\$ 32,401	
Bank Accounts, Receivables									
55	BOA CD X8434 (Joint)	Stmt 3-20-12	\$ 81,910		\$ 81,910			\$ 81,910	
56	BOA CD X0236 (Joint)	Stmt 3-20-12	\$ 206,959		\$ 206,959			\$ 206,959	
57	BOA X6950 Checking (Joint)	Stmt 3-20-12	\$ 12,298		\$ 12,298			\$ 12,298	
58	BOA X6950 Savings (Joint)	Stmt 3-20-12	\$ 10,128		\$ 10,128			\$ 10,128	
59	BOA X6984 Checking (Joint)	Stmt 3-20-12	\$ 2,717		\$ 2,717			\$ 2,717	
60	BOA X6984 Savings (Joint)	Stmt 2-16-12	\$ 23,068		\$ 23,068			\$ 23,068	
61	BOA X2273 Checking (MW-POD Alison)	Stmt 3-19-12	\$ 27,343		\$ 27,343			\$ 27,343	
62	BOA X2273 Savings (MW-POD Alison)	Stmt 3-19-12	\$ 57,144		\$ 57,144			\$ 57,144	
63	Chase X7722 Checking (MW)	Stmt 3-16-12	\$ 100		\$ 100			\$ 100	
64	Chase X7897 Savings (MW)	Stmt 3-16-12	\$ 75,305		\$ 75,305			\$ 75,305	
65	US Bank X8850 Checking (MW)	Stmt 4-12-12	\$ 1,005		\$ 1,005			\$ 1,005	
66	US Bank X9587 Savings (MW) COMMINGLED	Stmt 4-12-12	\$ 235,708		\$ 235,708			\$ 235,708	
67	Key Bank Money Market X 3689 (KW)	Stmt 2-13-12	\$ 12		\$ 12	\$ 12			
68	First Natl Bank AK X1105 Chex/Sav (KW)	Stmt 4-1-12	\$ 14,268		\$ 14,268	\$ 14,268			
69	First Natl Bank AK X7147 Sav (KW)	Stmt 1-19-12	\$ 5,000		\$ 5,000	\$ 5,000			
70	Northrim X0752 Bus Sav (KW) - POST SEP	Stmt 4-2-12	\$ 770,760		\$ 770,760	\$ 13,146	\$ 757,614		
71	Northrim X0794 Checking (KW) - POST SEP	Stmt 4-2-12	\$ 114,755		\$ 114,755	\$ 55,643	\$ 59,112		
72	Wells Fargo X0928 Bus Checking (KW)	Stmt 4-1-12	\$ 13,349		\$ 13,349	\$ 13,349			
73	Wells Fargo X3590 MM Savings (KW)	Stmt 4-1-12	\$ 8,741		\$ 8,741	\$ 8,741			
Insurance									
74	Gen'l American Life X9856 \$2 million (KW)	Term No CSV	X		X			X	
75	Jackson Nat'l Life X8270 \$1 million (KW)	Term No CSV	X		X			X	
Personal Property									
76	Household goods/Furnishings - Mercer Isl	Stip 5-14-12	X		X			X	
77	Children's photos, H's family memorabilia	Stip 5-14-12	X		X	X			
78	Household goods/Furnishings - Anchorage	Stip 5-14-12	X		X	X			
76	Wife's Jewelry	Stip 5-14-12	\$ 46,575		\$ 46,575			\$ 46,575	
77	Husband's Rolex (damaged)	Stip 5-14-12	X		X	X			
81	2003 Lexus LX470 SUV	Stip 5-14-12	\$ 26,623		\$ 26,623			\$ 26,623	
82	2003 Toyota Camry XLE sedan	Stip 5-14-12	\$ 8,059		\$ 8,059			\$ 8,059	
83	2009 Toyota Camry CH sedan	Stip 5-14-12	\$ 15,514		\$ 15,514			\$ 15,514	
84	2000 Toyota Tundra pick up (Gift to Kim)	Stip 5-14-12	\$ 5,220		\$ 5,220		\$ 5,220		
85	1994 Ford Clubwagon 15-passenger van	Stip 5-14-12	\$ 500		\$ 500	\$ 500			
86	2004 Volkswagen Jetta sedan (Brian's car)	Stip 5-14-12	X		X				
87	2000 Toyota Camry XL sedan (Julia's car)	Stip 5-14-12	X		X				
88	2001 Toyota Sequoia	Stip 5-14-12	\$ 10,000		\$ 10,000	\$ 10,000			
89	1991 Toyota Corolla	Stip 5-14-12	\$ 500		\$ 500	\$ 500			
90	2006 Jeep Grand Cherokee	Stip 5-14-12	\$ 5,489		\$ 5,489	\$ 5,489			
91	1987 Mercedes Benz 300D sedan	Stip 5-14-12	\$ 3,000		\$ 3,000	\$ 3,000			
92	1998 Honda Valkyrie Motorcycle	Stip 5-14-12	\$ 3,905		\$ 3,905	\$ 3,905			
90	DeRosa/Davison bikes	Stip 5-14-12	\$ 1,600		\$ 1,600	\$ 1,600			

WRIGHT Asset-Liability List

Ref. #	Description	Date	As of Valuation Date			Disposition to Kim		Disposition to Mary	
			Value	Encumbrance	Net Value	Community	Separate	Community	Separate
94	2003 Polaris ATV	Stip 5-14-12	\$ 1,110		\$ 1,110	\$ 1,110			
95	2001 Chaparral cabin cruiser	Stip 5-14-12	\$ 41,500		\$ 41,500			\$ 41,500	
96	Platform boat lift (not attached to dock)	Stip 5-14-12	\$ 3,000		\$ 3,000			\$ 3,000	
97	1998 Mastercraft ski boat	Stip 5-14-12	\$ 8,920		\$ 8,920	\$ 8,920			
98	Mastercraft boat lift	Stip 5-14-12	\$ 2,000		\$ 2,000	\$ 2,000			
99	Mastercraft boat trailer	Stip 5-14-12	\$ 505		\$ 505	\$ 505			
100	Shorelander Boat trailer	Stip 5-14-12	\$ 280		\$ 280			\$ 280	
101	Fiberglass 10 foot sailboat (gift)	Stip 5-14-12	X		X	X			
102	Walker dinghy	Stip 5-14-12	\$ 200		\$ 200			\$ 200	
103	Avon inflatable	Stip 5-14-12	\$ 275		\$ 275	\$ 275			
104	1995 Yamaha jet ski	Stip 5-14-12	X		X			X	
105	1998 Seadoo	Stip 5-14-12	X		X			X	
106	Honda generator	Stip 5-14-12	\$ 525		\$ 525	\$ 525			
107	1997 Mooney Bravo N236CM	Stip 5-14-12	\$ 183,000		\$ 183,000	\$ 183,000			
108	1974 Piper Super Cub 180 HP N6819L	Stip 5-14-12	\$ 93,511		\$ 93,511	\$ 93,511			
109	1974 Piper Super Cub N874SC	Stip 5-14-12	\$ 83,868		\$ 83,868	\$ 83,868			
110	1963 Cessna 185 Float Plane N4057Y	Stip 5-14-12	\$ 143,582		\$ 143,582	\$ 143,582			
111	Non-proprietary membership MICC	No Value	X		X			X	
112	Non-proprietary membership Wilea	No Value	X		X	X			
113	Travel perks, rewards, miles	Each keeps own	X		X	X		X	
DEBTS									
114	Consumer debt - each party assumes own	Paid in full monthly		X	X	X		X	
115	Contingent	TBD		X	X	X			
116	Rupnick v. Wright								
117	Kroener v. Wright								
118	ANA Cash Bal Plan contribution - <i>SEE NOTE 5</i>	2011 contribution		\$ (150,000)	\$ (150,000)		\$ (150,000)		
119	ANA Pension PSP contribution - <i>SEE NOTE 6</i>	2011 contribution		\$ (13,000)	\$ (13,000)		\$ (13,000)		
120	Residential repairs - 3608 North Point	Bid Estimates Rcvd		\$ (143,213)	\$ (143,213)	\$ (143,213)			
121	Residential rental repairs - 4034 North Point	Bid Estimates Rcvd		\$ (34,696)	\$ (34,696)	\$ (34,696)			
122	Total assets NET of encumbrances		\$ 22,142,303	\$ (4,648,773)	\$ 17,493,530	\$ 7,610,033	\$ 913,893	\$ 8,969,605	\$ -

TOTAL COMMUNITY ASSETS (Less Separate)			\$ 16,579,638	\$ 7,610,033		\$ 8,969,605
123	Overall Division			Transfer Payment	\$ 679,786	\$ (679,786)
124	MARY	50.00%		Net Community	\$ 8,289,819	\$ 8,289,819
125	KIM	50.00%		Net Percent	50.00%	50.00%

NOTES

- Rental maintenance, gas installation, tank - Per revision order 8-25-11 but delayed due to weather.
- Hangar maintenance - Per revision order 8-25-11 but delayed due to weather.
- Net present value at 5% of \$425,000 receivable. Does not include any provision for finder's fee/management fees due brother.
- Madrona Venture Fund - Parties to share equally in any future distributions of cash/assets in excess of \$101,977.
- ANA Cash Balance Plan - Contribution due in August 2012, may be in amount slightly higher than prior year reflected herein.
- ANA Pension PS Plan - Contribution due in August 2012, may be in amount slightly higher than prior year reflected herein.

Children's Accounts Linked to Parties' BOA Joint Accounts

- BOA X 4891 checking (Katie Wright/Mary Wright) balance 3-19-12: \$1,717.91.
- BOA X 4891 savings (Katie Wright/Mary Wright) balance 3-19-12: \$1,078.41.
- BOA X 1964 savings (Allison Wright Behrens/Mary Wright) balance 3-19-12: \$3,541.21.
- BOA X 1964 checking (Allison Wright Behrens/Mary Wright) balance 4-18-12: \$2,743.56.
- BOA X7900 savings (Laura Wright/Mary Wright) balance 3-19-12: \$128.34.
- BOA X7378 checking (Kelly Wright/Mary Wright) balance 3-19-12: \$1,436.29.
- BOA CD X8332 (Meaghan Wright/Mary Wright) balance 3-19-12: \$36,383.49.