

69806-1

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No. 69806-1

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

In re the Marriage of:

PAUL DAVIS,

Appellant,

vs.

JULIE DAVIS,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR WHATCOM COUNTY
THE HONORABLE IRA UHRIG

BRIEF OF RESPONDENT

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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

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I. INTRODUCTION

Recognizing the ultimate futility of challenging the merits of a just, equitable, and wholly discretionary decision awarding the wife 55% of the property and less than 3 years of maintenance after a 17-year marriage, the husband attempts to make a “federal case” out of the trial court’s “judicial notice” of the requirements for certification of public accountants. The trial court properly took notice of the requirements to become a CPA after the husband argued that the wife, who had not worked outside the home for 16 years, could and should “promptly” become certified as a public accountant rather than pursue her chosen career as a special education teacher. The husband makes this argument even though he voluntarily changed jobs while the dissolution was pending, taking a \$25,000 pay cut, because he decided his prior position no longer “suited” him “personality-wise.”

The husband’s argument on appeal that the trial court’s actions violated his state and federal constitutional rights and was evidence of the trial court’s bias is absolutely baseless. It was wholly within the trial court’s authority to inform itself of the law governing licensing which are consistent with the wife’s testimony of her understanding of the requirements. This court should affirm

and award the wife attorney fees based on her need, the husband's ability to pay, and the utter lack of merit of this appeal.

II. RESTATEMENT OF FACTS

A. The Parties Were Married For More Than 17 Years. The Wife Stayed Home To Care For Their Two Children During Most Of The Marriage.

Respondent Julie Davis, age 48, and appellant Paul Davis, age 49, married on May 30, 1992, and separated on September 12, 2009. (RP 158) They have two children: Andrea, age 18 (born December 1994), and Shane, age 12 (born May 2001). (RP 159) Julie's petition for legal separation, filed September 28, 2009, was later converted to a petition for dissolution. (CP 4; RP 40-41)

B. After The Parties Separated, The Wife Decided To Pursue A Career In Special Education.

Julie graduated in 1988 with a dual degree in accounting and business from Western Washington University. (RP 160) Julie worked for the Municipality of Metropolitan Seattle doing accounting-type work for its Vanpool department when the parties were first married, but she has never been certified as a public accountant (CPA). (RP 162-63) In 1996, after their daughter was born, with Paul's agreement, Julie stopped working outside the home to be a stay-at-home mom. (RP 164-65)

Within two months after filing the petition for legal separation, and despite being out of the work force for more than 13 years, Julie started looking for work. (RP 167) With the assistance of a community college class called “Transitions,” Julie updated her resume and started applying for jobs. (RP 168-69) Julie initially pursued employment in the accounting field, but soon discovered that the type of accounting that she had done in Seattle 13 years earlier, in larger corporate settings, did not exist in Bellingham. (RP 170-71) Julie found that most advertised positions were for clerical bookkeeping, an area where she had zero experience, or for accounting manager positions, an area where she did not have “anywhere near enough experience or recent enough experience to market” herself. (RP 170) Julie found herself in “no man’s land” in the accounting field. (RP 170)

After determining there was no market for her accounting skills in Bellingham, Julie decided to apply at Western Washington University to obtain a degree in special education. (RP 169-71) Julie wanted to teach special education in part because of her experience with the parties’ daughter, Andrea, who has disabilities including dysgraphia (a writing disability) and attention deficit disorder. (RP 172, 235-36) These disorders impact Andrea’s ability

to perform at school, but with accommodations she has performed well in school, and was applying for college at the time of trial. (RP 236-40)

By the time of trial, Julie had started classes at Western Washington and planned to graduate in spring 2014. (RP 174, 177) Julie testified that “normally” most graduating students do not get hired immediately after graduation and substitute-teach for the first year before they are eventually hired for a full-time position. (RP 178) If she is not hired for the 2014 fall term, Julie plans to substitute teach. (RP 178) Julie anticipated that she could earn \$35,000 her first year as a full-time teacher. (RP 178-79)

C. While The Dissolution Action Was Pending The Husband Voluntarily Changed Jobs, Reducing His Annual Income By \$25,000, Because His Prior Job No Longer “Suited” Him “Personality-wise.”

Paul has worked for Hubbell Power Systems in the high voltage utility industry since 2001 or 2002. (RP 73, 166) Paul had been Regional Vice President with Hubbell for 8 years, and earned \$190,839 in 2011. (RP 74, 78) While the dissolution action was pending, Paul resigned his position after deciding that “personality-wise” it did not “suit” him, and that it would be “beneficial” to his “health and wellbeing” to change positions. (RP 74) Paul became a

“territory manager” with Hubbell. (RP 73-74) The trial court found that by the time of trial, Paul’s annual income as a territory manager was approximately \$165,000. (Finding of Fact (FF) 2.21(II)(A), CP 69)

While expecting Julie and the trial court to accept his “choice” to earn significantly less income as a territory manager, Paul complained about Julie’s decision to pursue a career in special education rather than accounting. (RP 142-43, 482) (*See also* App. Br. 7-8, 20) Paul testified that, “logically,” Julie should become certified as a public accountant. (RP 143) Julie testified that it was not practical for her to pursue certification as a public accountant, because to qualify she would not only need recent supervised experience in the accounting field, but would need to pass the CPA test. (RP 385) Julie explained that she had checked with the “agency that does the certification” and confirmed the necessary requirements, but acknowledged that she could not recall if the amount of experience required was a year, a year and a half, or two years. (RP 385-86)

At trial, after Paul claimed there was no experience requirement, the trial court announced that it could and would take “judicial notice” of the experience required by the Washington

Board of Accountancy to apply for a CPA license. (RP 477, 481) The trial court noted that an applicant must have 12 months or a “total minimum of 2,000 hours” of public accounting experience in a “work environment,” “no more than eight years prior to that board receiving the application.” (RP 481) The requirements that the trial court (accurately) recited are set out in WAC 4-30-070, which establishes the experience requirements in order to obtain a CPA license. *See also* RCW 18.04.105(1)(C).

D. After A Three-Day Trial Before Whatcom County Superior Court Judge Ira Uhrig, Before Whom The Parties Had Previously Appeared, The Trial Court Divided Their Property And Awarded Spousal Maintenance And Child Support To The Wife.

On October 31, 2012, the parties appeared before Whatcom County Superior Court Judge Ira Uhrig (the “trial court”) for a 3-day trial to resolve property, maintenance, and child support issues. The parties had previously agreed on a parenting plan that gave the husband no residential time with the parties’ children, then ages 11 and 17. (CP 26-27; RP 9-10, 13)

At the start of trial, the trial court disclosed for the second time its pre-existing relationship with the wife’s trial counsel, with whom he plays in a band “once in a while.” (RP 3-4) Husband’s trial counsel acknowledged the disclosure and confirmed that both

she and the husband were “fine” and ready to proceed. (RP 4-5) The husband had been made aware of this relationship nearly three years earlier, when the parties first appeared before the trial court on December 11, 2009, on the husband’s motion to revise temporary orders. (CP 147) According to the minutes of that hearing, “Court disclosed friendship w/ atty Hardesty in band. Atty Korb had no objection, nor her client.” (CP 147) The trial court granted the husband’s motion for revision in that 2009 hearing (CP 147), and the parties appeared before Judge Uhrig at least two more times before trial. (CP 148, 149)

The trial court largely adopted the wife’s proposed property distribution, awarding her 55% of the marital estate, including 70% of the proceeds from the sale of the family residence. (*See* CP 39, 72, 102) The trial court allowed the wife and younger son to remain in the family residence until the son graduates from middle school at the end of Spring 2015, when the court ordered the house sold. (CP 71, 101-02) The husband was ordered to continue to pay \$500 of the \$1,458 monthly mortgage payment¹, plus the real property

¹ This is approximately one-third of the mortgage payment, a responsibility consistent with the fact that the husband will receive approximately one-third of the proceeds when the home is sold.

taxes, for which he will be reimbursed at closing. (CP 71, 101-02) The wife was ordered to pay all other expenses for the house. (CP 71, 101-02) The trial court found its property distribution was “fair and equitable in consideration of all of the evidence.” (FF 2.21(IV)(K), CP 71-72)

The husband, whose gross monthly income was \$13,718.62, was ordered to pay the wife monthly spousal maintenance of \$3,500 per month until September 2014, which is when the wife could pursue full-time employment as a special education teacher. (CP 69, 70, 102) The trial court further ordered that if the wife had not obtained full-time employment by then, the husband should pay maintenance at the reduced amount of \$1,750 per month for an additional year or until the wife obtains a full-time job, whichever comes first. (CP 70, 102)

The trial court found its maintenance award reasonable in light of the parties’ “relatively long marriage” and their standard of living during the marriage. (FF 2.21(III)(C), CP 70) The trial court found that the husband has “far greater earning capacity than the wife, which will not change even with the passage of time and the completion of the wife’s career path.” (FF 2.2(III)(A), CP 70) The trial court also found that because the husband’s employer

pays for “many day to day items that most other people in the work force have to pay for, the husband is [] able to maintain a higher lifestyle than most persons with equivalent income.” (FF 2.2(III)(A), CP 70)

The trial court found that an award of \$3,500 in maintenance to the wife is “consistent with the statutory goals” to meet her needs, and the “husband has the ability to meet those needs without significant impairment of his lifestyle.” (FF 2.21(III)(C), CP 70) The trial court also found that the husband leaves the marriage “virtually debt-free,” while the “wife has incurred significant post-separation debt both by way of consumer credit, attorney’s fees and student loans.” (FF 2.21(III)(D), CP 70)

The trial court rejected the husband’s claim that the wife should either seek minimum wage employment or pursue a CPA license, instead of furthering her education as a special education teacher. (FF 2.21(III)(B), CP 70) The trial court found the husband’s claims “unreasonable, especially when considered in light of the fact that the husband voluntarily gave up in annual salary nearly as much as wife hopes to make when she finishes her career path.” (FF 2.21(III)(B), CP 70) The trial court also rejected the husband’s claim that “the wife could promptly acquire a CPA

license in the near future” as not supported by the wife’s testimony or by Washington State’s requirements for licensing, “of which the court has taken judicial notice.” (CP 45) The trial court found it was unreasonable for the wife to “sit for a CPA license given her lack of employment history and the Washington State requirements.” (FF 2.21(III)(B), CP 70)

The trial court ordered the husband to pay child support of \$1,502.14 for both children. (CP 78) Child support was calculated using monthly net income for the husband of \$7,052 per month – after paying spousal maintenance to the wife of \$3,500 – and monthly net income for the wife of \$3,864.06, which includes spousal maintenance plus imputed income of \$783 per month – minimum wage earnings at “half time,” as proposed by the husband, since the wife is a full time student. (CP 76-77, 86) Post-secondary support for the daughter, who would be graduating from high school the following year, was reserved. (CP 79)

The husband appeals. (CP 103)

III. ARGUMENT

A. A Trial Court Has Authority To Take “Judicial Notice” Of Statutes And Published Regulations Adopted By The State.

The husband’s appeal is premised on his misguided claim that the trial court somehow violated the “appearance of fairness” by allegedly investigating a “critical factual issue” and informing itself of the regulations governing licensure for certified public accountants. (App. Br. 12-18) But not only was the trial court authorized to take notice of these regulations, published under WAC 4-30-070, the trial court was *required* to do so. Under the Administrative Procedure Act, the trial court is required to take judicial notice of rules and regulations properly filed and published by agencies subject to the APA – including the Washington State Board of Accountancy. RCW 34.05.210(9) (judicial notice *shall* be taken of rules filed and published by agencies governed by RCW ch. 34.05); RCW 18.04.055 (Board of Accountancy may adopt or amend rules under RCW ch. 34.05). The licensing requirements for certified public accountants are also codified under RCW 18.04.105(1)(d), which is also entitled to judicial notice. *Gross v. City of Lynnwood*, 90 Wn.2d 395, 397, 583 P.2d 1197 (1978) (“It is

the general rule that public statutes of Washington State will be judicially noticed by all courts of this state”).

The notion that the trial court’s “judicial notice” of the law of this state is somehow a violation of the husband’s constitutional rights is absurd. There is nothing wrong with the court informing itself of the law. *See e.g. British Columbia Ministry of Health v. Homewood*, 93 Wn. App. 702, 708, 970 P.2d 381, 384 (1999) (“courts may independently research and consider foreign law materials after a party raises an issue concerning foreign law”), *rev. denied*, 140 Wn.2d 1015, 5 P.3d 8 (2000); *Mavroudis v. Pittsburgh-Corning Corp.*, 86 Wn. App. 22, 29, 935 P.2d 684 (1997) (appellate court acknowledging that it conducted its own independent research); *Long v. Home Health Services of Puget Sound, Inc.*, 43 Wn. App. 729, 737, 719 P.2d 176 (1986) (appellate court acknowledging that it conducted its own independent research), *rev. denied*, 106 Wn.2d 1012 (1986); *City of Pasco v. Titus*, 26 Wn. App. 412, 417, fn. 3, 613 P.2d 181 (1980) (reversing trial court based on appellate court’s independent research of the law), *rev. denied*, 94 Wn.2d 1005. The trial court in this case clearly had authority to take judicial notice of the requirements established by the Washington State Board of Accountancy, including “the experience

requirements for a CPA in Washington” (RP 480), published in the Washington Administrative Code. RCW 34.05.210(9). See *Cresap v. Pac. Inland Nav. Co.*, 78 Wn.2d 563, 478 P.2d 223 (1970); *Osborn v. Pub. Hosp. Dist. I, Grant Cnty.*, 80 Wn.2d 201, 492 P.2d 1025 (1972).

In *Cresap*, our Supreme Court reversed a trial court’s decision refusing to take judicial notice of the federal Safety and Health Regulations for Longshoring. The Court held that the “advent of the Federal Register has made available to the courts an accessible source of indisputable evidence of the federal rules and regulations. Judicial knowledge of those published rules and regulations should be accepted.” *Cresap*, 78 Wn.2d at 566. Similarly, our Supreme Court in *Osborn* reversed an order dismissing the plaintiff’s action against a hospital for negligence after first taking judicial notice of WAC 248-18-200(7), which requires that hospitals “shall establish safety policies and procedures for the care of the patients who because of their age or condition are not responsible for their acts.” 80 Wn.2d at 205.

In this case, the trial court took judicial notice of the requirements for applicants seeking to obtain a license to practice public accounting, noting that, consistent with the wife’s testimony,

the administrative regulations require employment experience in a work environment of 12 months or 2,000 minimum hours within 8 years of the person applying for certification. (RP 481) On appeal, the husband does not claim that these “facts” are not accurate. Nor can he, as these are “facts capable of immediate and accurate demonstration by resort to easily accessible sources of indisputably accuracy and verifiable certainty.” *Tyler Pipe Indus., Inc. v. Dep’t of Revenue*, 96 Wn.2d 785, 796, 638 P.2d 1213 (1982) (citations omitted); *See also* ER 201(b) (a “judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”). Both the Washington Administrative Code and Revised Code of Washington set out the experience requirements needed to obtain a CPA license consistent with the trial court’s description at trial, as well as with the wife’s testimony. (Compare Appendix A (WAC 4-30-070) and Appendix B (RCW 18.04.105(1)(d)) *with* RP 385, 481).

Even without the trial court taking judicial notice of WAC 4-30-070 or RCW 18.04.105(1)(d), its conclusion that the wife did not have enough current experience to “promptly” obtain her CPA

license is supported by substantial evidence. At trial, the wife testified, based on the information she reviewed from the agency that promulgates the requirements, that her “job experience is too far in the past to qualify,” as she would need “like a year and a half of accounting within the last seven years, seven or eight years.” (RP 385-86)

The husband complains that the parties had “no notice” of the judge’s “testimony.” (App. Br. 15) But the trial court was not “testifying” by announcing that it was taking judicial notice of published regulations governing certification of public accountants. Further, if the husband believed that this was not an appropriate subject for judicial notice, he should have asked to be heard on the issue under ER 201(e) (“party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.”) The husband did not request an “opportunity to be heard,” and his complaint is waived on appeal. RAP 2.5(a); *Marriage of Studebaker*, 36 Wn. App. 815, 818, 677 P.2d 789 (1984); *Lindblad v. Boeing Co.*, 108 Wn. App. 198, 207, 31 P.3d 1 (2001) (declining to

review issue, theory, argument, or claim of error not presented at the trial court level).

The cases cited by the husband that hold it is “reversible error for a judge to search for and rely on extrinsic evidence to be applied in corroborating or discrediting the testimony of a witness” (App. Br. 13) are irrelevant, because in those cases, the trial court sought out additional “evidence” to resolve disputed (and disputable) facts. *See* App. Br. 13, *citing Christensen v. Gensman*, 53 Wn.2d 313, 333 P.2d 658 (1958) (error for trial court to independently view the premises for damage); *Elston v. McGlaulin*, 79 Wash. 355, 140 P. 396 (1914) (error for trial court to view premises without consent of parties to support its own theory of damages); *State v. Romano*, 34 Wn. App. 567, 662 P.2d 406 (1983) (error for trial court to contact third parties to verify defendant’s statements). Here, the trial court did not search for additional evidence, but considered certification requirements that it has authority to judicially notice under RCW 34.05.210 and ER 201 and consistent with the Code of Judicial Conduct, which allows the trial court to consider “any facts that may properly be judicially noticed.” CJC Canon 2.9(C) (*cited at* App. Br. 14).

The trial court was required to take judicial notice of the regulations governing licensing of certified public accountants. RCW 34.05.210(9). The husband's claim that judicial notice of these indisputable requirements violated his constitutional rights is without merit.

B. The Trial Court's Judicial Notice Of Published Regulations Is Not Evidence Of Bias.

The husband's complaint that the trial court taking judicial notice "suggests an actual bias" is disingenuous at best. (App. Br. 19) The trial court has authority to take judicial notice of the licensing requirements for certified public accountants (RCW 34.05.210), and the trial court doing "its job" cannot be evidence of bias. *See Marriage of Wallace*, 111 Wn. App. 697, 706, 45 P.3d 1131 (2002) (trial court's comments explaining inevitable legal consequences of husband's actions did not show bias), *rev. denied*, 148 Wn.2d 1011 (2003). Nor is the trial court's rejection of the husband's proposals, and adoption of the wife's proposals evidence of bias. (App. Br. 18) *See Marriage of Farr*, 87 Wn. App. 177, 188, 940 P.2d 679 (1997) (disagreement with court's ruling is not evidence of bias), *rev. denied*, 134 Wn.2d 1014 (1998).

This court must reject the husband's belated complaint that the trial court's "close affiliation" with the wife's trial counsel is evidence of bias. (See App. Br. 19) The husband insinuates that disclosure of their relationship came only at the start of trial, and that the husband only acquiesced to the trial court presiding because he was "eager to put an end to the protracted proceedings." (App. Br. 18-19) But the husband was aware of the trial court's association with the wife's counsel three years before trial, agreed that the trial court could impartially preside over their case, and prevailed in the parties' first appearance before the trial court. (CP 147) The husband cannot now complain, just because he is unhappy with the court's ruling after trial. See *Buckley v. Snapper Power Equip. Co.*, 61 Wn. App. 932, 939, 813 P.2d 125 (1991) ("a litigant who for the first time during trial learns of grounds for disqualification must promptly make his objection known, as by moving for a mistrial. He may not, after learning of grounds for disqualification, proceed with the trial until the court rules adversely to him and then claim the judge is disqualified"), *rev. denied*, 118 Wn.2d 1002, 822 P.2d 287 (quoting, *Williams & Mauseth Ins. Brokers, Inc. v. Chapple*, 11 Wn. App. 623, 626, 524 P.2d 431 (1974)).

The trial court acted fairly, and within the authority vested in it. The husband's belated complaints of bias and constitutional due process violations are a meritless effort to avoid a fair and reasonable decision by the trial court.

C. The Property And Family Support Awards Were Well Within The Trial Court's Broad Discretion.

The trial court is given "broad discretion" to divide property and award maintenance in a dissolution action, "because it is in the best position to determine what is fair, just, and equitable." *Marriage of Wallace*, 111 Wn. App. 697, 707, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003); *Marriage of Luckey*, 73 Wn. App. 201, 209-10, 868 P.2d 189 (1994). The trial court's awards will not be disturbed on appeal absent a showing that the trial court abused its discretion. *Wallace*, 111 Wn. App. at 707; *Luckey*, 73 Wn. App. at 209-10.

Here, the trial court did not abuse its discretion in awarding 55% of the property and spousal maintenance for at least two (and at most three) years to the wife, who had not worked outside of the home for 16 years at the time of trial. The husband's complaint that the trial court abused its broad discretion because the wife could become "self-supporting by a quicker route" if she followed the

career path *he* believed was more appropriate is particularly misplaced. (App. Br. 20)

First, it shows remarkable chutzpah for the husband to chastise the wife for purportedly “lacking the desire” to more immediately make the maximum amount of income possible (App. Br. 20) when he voluntarily took a pay cut after the parties separated because a lower-paid position better “suit[ed] him.” (RP 74)

Second, spousal maintenance is not only intended to provide for a spouse until she becomes self-supporting, but is also a “flexible tool by which the parties’ standard of living may be equalized for an appropriate period of time.” *Marriage of Washburn*, 101 Wn.2d 168, 178-79, 677 P.2d 152 (1984). “The standard of living of the parties during the marriage and the parties’ post dissolution economic condition are paramount concerns when considering maintenance and property awards in dissolution actions.” *Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997) (*citations omitted*).

In this case, even with the husband’s voluntary pay cut, he earns gross monthly income of \$13,718.62. (FF 2.21(II)(A), CP 69) There was no evidence that, even if the wife was able to find a

position in the accounting field (and there was evidence that she could not), she would be able to earn anything even close to the husband's income. (RP 314-16, 340); *see also* FF 2.2(III)(A), CP 70) A slightly disproportionate award of property and two to three years of spousal maintenance to the wife, which still leaves the husband with nearly three times the wife's income, was not an abuse of discretion.

D. The Trial Court Did Not Err In Imputing Half-Time Income To The Wife In Light Of The Evidence She Would Attend School Full-Time. Even If There Were Any Error, The Husband Invited The Error.

When calculating the mother's income for purposes of child support, the trial court did not abuse its discretion in imputing income to her at minimum wage at half time, *as proposed by the husband*, when the mother goes to school full-time and testified that she did not think it was possible to hold down a job, go to school, and be entirely responsible for the care of the parties' two children. (RP 177-79, 496-97; CP 10, 21) As an initial matter, any error in the trial court's award of child support was invited by the husband, who had proposed at trial that "child support should be set with father's gross income at \$13,718.62 per month, and the mother should be imputed part time at minimum wage." (CP 10,

21; RP 496) The husband cannot now complain about an alleged error at trial that he set up himself. *Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995).

On appeal, the husband complains that it was “not fair” that the trial court did not impute income above the minimum wage given the mother’s “degrees” and her “employment experience.” (App. Br. 22) But her degrees were earned a quarter of a century ago, her employment experience dated back 16 years, and there was evidence that even with the wife’s education and experience, she could not find any employment, never mind employment above the minimum wage. (RP 160, 164-65, 314-16, 340)

That the husband argues the mother is somehow not providing the children with her “full support” (App. Br. 23) is ludicrous under these circumstances, where the children live exclusively in her home. A new child support order that lowered the husband’s child support obligation would benefit only him, not the parties’ children, who receive absolutely no benefit from the husband’s household other than his transfer payment. Because the husband chooses to spend no time with his children, the household expenses that he would otherwise bear when the children reside in his home are eliminated, and the mother’s household expenses are

increased because the children spend 100% of their time in her home. See *Marriage of Krieger & Walker*, 147 Wn. App. 952, 965, ¶ 23, 199 P.3d 450, 457 (2008) (“As a result of [the father’s] choice, [the mother] bears all of the children's expenses for recreation, entertainment, extra-curricular activities, and other incidentals simply because she is the one responsible for them at all times. The trial court's decision rewards [the father] for his abdication of responsibility for the children by improving his financial position at [the mother]'s expense.”).

E. This Court Should Award The Wife Attorney Fees Based On Her Need, The Husband’s Ability To Pay, And The Lack Of Merit To This Appeal.

This court should award the wife attorney fees based on her need and the husband’s ability to pay under RCW 26.09.140. Even after the husband pays both spousal maintenance and child support obligations, his income still exceeds the wife, who maintains a household for three while the husband lives alone.

This court should also award attorney fees to the wife for having to respond to the husband’s appeal, because it is frivolous. RAP 18.9(a) (authorizing terms and compensatory damages for a frivolous appeal); RAP 18.1; *Marriage of Healy*, 35 Wn. App. 402, 406, 667 P.2d 114, *rev. denied*, 100 Wn.2d 1023 (1983) (an appeal

may be so devoid of merit to warrant the imposition of sanctions and an award of attorney fees). There is absolutely no merit to the husband's claim that the trial court proceedings below violated his constitutional rights or somehow deprived him of a fair trial. In essence, the husband challenges the integrity of the trial court for doing exactly what it is required to do – taking judicial notice of the laws and regulations of this state. By evoking the bogeyman of “constitutional deprivations,” the husband seeks to avoid the trial court's fair, reasonable, and wholly discretionary decision, and his challenge to the trial court's child support order is premised on the trial court's acceptance of his proposal as to the income to be imputed to the wife. The wife should not be forced to bear the cost of the husband's frivolous appeal, and this court should award her attorney fees.

IV. CONCLUSION

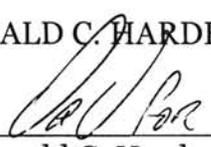
The trial court's actions in this case were well within its authority and discretion. This court should affirm and award attorney fees to the wife.

Dated this 18th day of September, 2013.

SMITH GOODFRIEND, P.S.

RONALD C. HARDESTY, P.C.

By:  _____

By:  _____

Valerie A. Villacin
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Attorneys for Respondent

DECLARATION OF SERVICE

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

That on September 18, 2013, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
Ronald C. Hardesty Ronald C. Hardesty P.C. 119 North Commercial, Suite 540 Bellingham, WA 98225-4446	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Patricia Novotny Attorney at Law 3418 N.E. 65th St., Ste A Seattle, WA 98115	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 18th day of September, 2013.



Victoria K. Isaksen

Washington Administrative Code Currentness
Title 4. Accountancy, Board of
Chapter 4-30. General Provisions
Individual Experience and Verification

WAC 4-30-070

4-30-070. What are the experience requirements in order to obtain a CPA license?

- (1) Qualifying experience may be obtained through the practice of public accounting and/or employment in industry or government. In certain situations, employment in academia may also provide experience to obtain some or all of the competency requirements. Qualifying experience may be obtained through one or more employers, with or without compensation, and may consist of a combination of full-time and part-time employment.
- (2) Employment experience should demonstrate that it occurred in a work environment and included tasks sufficient to have provided an opportunity to obtain the competencies defined by subsection (3) of this section and:
- (a) Covered a minimum twelve-month period (this time period does not need to be consecutive);
 - (b) Consisted of a minimum of two thousand hours;
 - (c) Provided the opportunity to utilize the skills generally used in business and accounting and auditing including, but not limited to, accounting for transactions, budgeting, data analysis, internal auditing, preparation of reports to taxing authorities, controllership functions, financial analysis, performance auditing and similar skills;
 - (d) Be verified by a licensed CPA as meeting the requirements identified in subsection (5) of this section; and
 - (e) Be obtained no more than eight years prior to the date the board receives your complete license application.
- (3) **Competencies:** The experience should demonstrate that the work environment and tasks performed provided the applicant an opportunity to obtain the following competencies:
- (a) Knowledge of the Public Accountancy Act and related board rules applicable to licensed persons in the state of Washington;
 - (b) Assess the achievement of an entity's objectives;
 - (c) Develop documentation and sufficient data to support analysis and conclusions;

- (d) Understand transaction streams and information systems;
- (e) Assess risk and design appropriate procedures;
- (f) Make decisions, solve problems, and think critically in the context of analysis; and
- (g) Communicate scope of work, findings and conclusions effectively.

(4) The applicant's responsibilities: The applicant for a license requesting verification is responsible for:

- (a) Providing information and evidence to support the applicant's assertion that their job experience could have reasonably provided the opportunity to obtain the specific competencies, included on the applicant's Experience Affidavit form presented for the verifying CPA's evaluation;
- (b) Producing that documentation and the completed Experience Affidavit form to a qualified verifying CPA of their choice;
- (c) Determining that the verifying CPA meets the requirements of subsection (5) of this section; and
- (d) Maintaining this documentation for a minimum of three years.

(5) Qualification of a verifying CPA: A verifying CPA must have held a valid CPA license to practice public accounting in the state of Washington or be qualified for practice privileges as defined in RCW 18.04.350(2) for a minimum of five years prior to verifying the candidate's experience, including the date that the applicant's experience is verified. The five years do not need to be consecutive.

Credits

Statutory Authority: RCW 18.04.055(11), 18.04.105 (1)(d). 10-24-009, amended and recodified as S 4-30-070, filed 11/18/10, effective 12/19/10; 05-01-137, S 4-25-730, filed 12/16/04, effective 1/31/05. Statutory Authority: RCW 18.04.055(11) and 18.04.105 (1)(d). 02-04-064, S 4-25-730, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.215. 01-03-011, S 4-25-730, filed 1/5/01, effective 6/30/01. Statutory Authority: RCW 18.04.055 and 18.04.215 (1)(a). 99-18-113, S 4-25-730, filed 9/1/99, effective 1/1/00. Statutory Authority: RCW 18.04.055. 93-12-068, S 4-25-730, filed 5/27/93, effective 7/1/93.

Current with amendments adopted through the 13-12 Washington State Register dated, June 19, 2013.

WAC 4-30-070, WA ADC 4-30-070

West's Revised Code of Washington Annotated
Title 18. Businesses and Professions (Refs & Annos)
Chapter 18.04. Accountancy (Refs & Annos)

West's RCWA 18.04.105

18.04.105. Issuance of license--Requirements--Examination--Fees--Certified public accountants' account--
Valid certificates previously issued under chapter--Continuing professional education--Inactive certificates

Currentness

(1) A license to practice public accounting shall be granted by the board to any person:

(a) Who is of good character. Good character, for purposes of this section, means lack of a history of dishonest or felonious acts. The board may refuse to grant a license on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional and ethical responsibilities of a licensee and if the finding by the board of lack of good character is supported by a preponderance of evidence. When an applicant is found to be unqualified for a license because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board and a notice of the applicant's right of appeal;

(b) Who has met the educational standards established by rule as the board determines to be appropriate;

(c) Who has passed an examination;

(d) Who has had one year of experience which is gained:

(i) Through the use of accounting, issuing reports on financial statements, management advisory, financial advisory, tax, tax advisory, or consulting skills;

(ii) While employed in government, industry, academia, or public practice; and

(iii) Meeting the competency requirements in a manner as determined by the board to be appropriate and established by board rule; and

(e) Who has paid appropriate fees as established by rule by the board.

(2) The examination described in subsection (1)(c) of this section shall test the applicant's knowledge of the subjects of accounting and auditing, and other related fields the board may specify by rule. The time for holding the examination is fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and taking the examination, including methods for grading examinations and determining a passing grade required of an applicant for a license. The board shall to the extent possible see to it that the grading of the examination, and the passing grades, are uniform with those applicable to all other states. The board may make use of all or a part of the uniform certified public accountant

examination and advisory grading service of the American Institute of Certified Public Accountants and may contract with third parties to perform administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties under this chapter. The board shall establish by rule provisions for transitioning to a new examination structure or to a new media for administering the examination.

(3) The board shall charge each applicant an examination fee for the initial examination or for reexamination. The applicable fee shall be paid by the person at the time he or she applies for examination, reexamination, or evaluation of educational qualifications. Fees for examination, reexamination, or evaluation of educational qualifications shall be determined by the board under chapter 18.04 RCW. There is established in the state treasury an account to be known as the certified public accountants' account. All fees received from candidates to take any or all sections of the certified public accountant examination shall be used only for costs related to the examination.

(4) Persons who on June 30, 2001, held valid certificates previously issued under this chapter shall be deemed to be certificate holders, subject to the following:

(a) Certificate holders may, prior to June 30, 2006, petition the board to become licensees by documenting to the board that they have gained one year of experience through the use of accounting, issuing reports on financial statements, management advisory, financial advisory, tax, tax advisory, or consulting skills, without regard to the eight-year limitation set forth in (b) of this subsection, while employed in government, industry, academia, or public practice.

(b) Certificate holders who do not petition to become licensees prior to June 30, 2006, may after that date petition the board to become licensees by documenting to the board that they have one year of experience acquired within eight years prior to applying for a license through the use of accounting, issuing reports on financial statements, management advisory, financial advisory, tax, tax advisory, or consulting skills in government, industry, academia, or public practice.

(c) Certificate holders who petition the board pursuant to (a) or (b) of this subsection must also meet competency requirements in a manner as determined by the board to be appropriate and established by board rule.

(d) Any certificate holder petitioning the board pursuant to (a) or (b) of this subsection to become a licensee must submit to the board satisfactory proof of having completed an accumulation of one hundred twenty hours of CPE during the thirty-six months preceding the date of filing the petition.

(e) Any certificate holder petitioning the board pursuant to (a) or (b) of this subsection to become a licensee must pay the appropriate fees established by rule by the board.

(5) Certificate holders shall comply with the prohibition against the practice of public accounting in RCW 18.04.345.

(6) Persons who on June 30, 2001, held valid certificates previously issued under this chapter are deemed to hold inactive certificates, subject to renewal as inactive certificates, until they have petitioned the board to become licensees and have met the requirements of subsection (4) of this section. No individual who did not hold a valid certificate before July 1, 2001, is eligible to obtain an inactive certificate.

(7) Persons deemed to hold inactive certificates under subsection (6) of this section shall comply with the prohibition against the practice of public accounting in subsection (8)(b) of this section and RCW 18.04.345, but are not required to display the term inactive as part of their title, as required by subsection (8)(a) of this section until renewal. Certificates renewed to any persons after June 30, 2001, are inactive certificates and the inactive certificate holders are subject to the requirements of subsection (8) of this section.

(8) Persons holding an inactive certificate:

(a) Must use or attach the term "inactive" whenever using the title CPA or certified public accountant or referring to the certificate, and print the word "inactive" immediately following the title, whenever the title is printed on a business card, letterhead, or any other document, including documents published or transmitted through electronic media, in the same font and font size as the title; and

(b) Are prohibited from practicing public accounting.

Credits

[2004 c 159 § 2, eff. June 10, 2004; 2001 c 294 § 7; 2000 c 171 § 2; 1999 c 378 § 2; 1992 c 103 § 7; 1991 sp.s. c 13 § 20; 1986 c 295 § 6; 1985 c 57 § 3; 1983 c 234 § 7.]

West's RCWA 18.04.105, WA ST 18.04.105

Current with 2013 Legislation effective through August 1, 2013