IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

SNOPAC PRODUCTS, INC. a Washington corporation, Appellant/Cross-Respondent, v. LESLIE BLAKEY SPENCER, and TAMMY S. BLAKEY, Respondents/Cross-Appellants.	)	No. 66115-9-I DIVISION ONE UNPUBLISHED OPINION FILED: July 9, 2012

Spearman, A.C.J. — In this appeal from a dissenters' rights action in a closely held family fishing company, the principal issue is the trial court's valuation of the dissenters' shares, where the main asset held by the company is a single fishing vessel. The record shows the trial court's valuation of the vessel was well within the range of evidence presented at trial, was therefore supported by substantial evidence, and we decline to substitute our judgment for that of the trial court on a factual dispute over the valuation of property.

Additionally, we conclude the trial court did not abuse its discretion in awarding fees and costs under the dissenters' rights statute, RCW 23B.13.210(2)(b). But because the trial court failed to make findings of fact and conclusions of law regarding whether the fees were reasonable and necessary, we must vacate the order awarding

fees and remand for entry of findings and conclusions.

Affirmed in part, reversed in part, and remanded.

FACTS

Snopac Products, Inc. ("Snopac") is a fish and crab processing company that operates in Alaska. Snopac's primary processing operation is onboard a floating processing vessel called the P/V Snopac Innovator (the "Innovator"). Snopac is a family owned and operated company. Bruce Blakey started Snopac in 1983, and his son, Greg Blakey, has managed the company's business affairs since inception. Three years after formation of the company, in 1986, Greg Blakey purchased a 49 percent ownership interest in Snopac from his father. Bruce Blakey divested his remaining 51 percent ownership interest in his four children as follows: Greg–21 percent; Glenda–10 percent; Tammy–10 percent; Leslie–10 percent. As a result of the transfers, Greg Blakey became the 70 percent controlling shareholder in Snopac with each of his three sisters holding a minority 10 percent interest in the company. Greg Blakey continued to manage Snopac's operations and his sisters became "passive shareholders, who did not participate in management of the business."

In the 1980s and 1990s, Snopac had very profitable years, annually distributing hundreds of thousands of dollars to Glenda, Tammy, and Leslie for their passive interests. In the late 1990s, however, the fishing industry changed dramatically. Increased use of farmed fish lowered the market value of wild Alaska salmon, and the American Fisheries Act, enacted in 1998, gave large processing companies a

competitive advantage over smaller enterprises such as Snopac. Additionally, the Bering Sea Opilio (snow) crab quota collapsed after the 1999 season, putting Snopac in a poor economic condition by permitting the company to process relatively small volumes of low margin fish. Starting in 2000, the quotas for Opilio crab dropped to the point where it was uneconomic to process them on St. George Island where Snopac had its operations.

In 2004, legislation known as "crab rationalization" limited Snopac's processing ability further. The legislation allocated the legal right to process only a fixed percentage of Bering Sea Opilio crab. Unfortunately, Snopac was unique among all other crab processing companies in that it had a processing history only on St. George Island in the Bearing Sea. As a result of this, the "community protections" portion of the crab rationalization legislation restricted Snopac from engaging in processing anywhere else. All other crab processing companies could legally process in Dutch Harbor and St. Paul Island, where costs and infrastructure allowed for profitable processing. Additionally, a large storm in 2002 had destroyed the man-made harbor in St. George, making it physically impossible to operate processing facilities, and making Snopac's land based investments not only valueless, but a liability on the company. Thus, in the early 2000s, the large passive distributions to Glenda, Tammy, and Leslie disappeared.

In 2004, Snopac was at a crossroads, either needing to dramatically increase processing capacity so that increased processing volume would allow for eventual

profitability, or, in the alternative, to shut the company down. At that point, Snopac's debt was $5 million and Greg Blakey could have closed the company with little adverse impact upon himself, although it would have put many long-term employees out of work. Greg chose to attempt to increase capacity, and purchased the M/V Coastal Star for $2,250,000 from Icicle Seafoods, renaming it the "Innovator."

The Innovator required a significant investment to enable it do what was necessary for Snopac to compete with other companies in late 2004. Snopac ultimately invested over $9 million in the purchase and renovation of the Innovator. The majority of the debt was financed either directly or indirectly by Greg and his father, Bruce. The business decision to purchase and renovate the Innovator was made by Greg without support or approval of his sisters.

Although Snopac was significantly in debt, Greg made another business decision that further increased the debt load of Snopac. In January 2008, just five months before redemption of his sisters' stock, Greg had Snopac enter into an agreement to purchase a non-functioning fish processing plant in Dillingham, Alaska for $1.1 million. Thereafter, between January and April 2008, Snopac invested approximately $1.6 to $1.7 million to upgrade and equip the Dillingham plant to make it operational. The total amount spent by Snopac to purchase and renovate the Dillingham plant in the first five months of 2008 was approximately $2.8 million.

Over time, the lack of distributions and the unilateral business decisions by Greg began to make his siblings suspicious, and they began to question the way the

business was run. Greg's separate, personal investment in two business ventures did not help matters: he used both personal funds and loans from Snopac to purchase assets for his private ventures, and the costs associated with the ventures were kept on Snopac's books. Moreover, when Snopac lent Greg money, it was at a very low interest rate compared to the rate he had previously charged Snopac when Snopac took a loan from him. This appearance of commingling of funds combined with a lack of communication between Greg and his siblings led to further confusion and mistrust. Additionally, Greg's siblings believed Snopac was too generous in providing bonuses to its employees, and that instead, the money should have been distributed to the shareholders as profits.

Snopac's total revenue from processed fish sales increased dramatically from 2005 into 2008 starting at $11,504,033 up to the peak of $25,715,837 in 2007. The net profit, however, was still very low. In 2007, its most successful year since the purchase of the Innovator, Snopac had a pre-tax profit of only $168,000. This was largely due to the overwhelming size of the prior losses during the previous five years. "However, with a properly equipped Innovator and the largest revenue production in 2007 ($25 million) things looked promising for the future." (Findings of Fact (FF) no. 18.)

Starting in 2006, after Greg's siblings questioned his business practices, he gave them access to Snopac's books. Previously, Snopac had sent all shareholders audited financial statements, and Greg had emailed his siblings intermittently about Snopac's activities. In December 2007, Greg and his siblings met twice in an

unsuccessful attempt to resolve issues with his siblings.

Greg's father, Bruce, suggested that Snopac hire an independent appraiser to value the company and their shares. Snopac hired Owen Dahl of the Moss Adams firm, in the hope his siblings would voluntarily sell their shares back to Snopac. But the trial court found that Dahl's initial opinion on valuation, issued December 4, 2007, "was haphazard, incomplete and inaccurate[,]" and not the result of "a reasoned analysis." (FF no. 31). Dahl testified that he had doubts as to the accuracy of the valuation, including that Snopac's primary asset, the Innovator, was listed too high at $9.1 million, the value listed on Snopac's own books. Dahl believed that book value is not normally a good indicator of fair market value. As such, Dahl requested that Snopac retain a professional marine surveyor to appraise the actual current fair value of the Innovator. The $9.1 million "book value" used in Dahl's initial opinion appears to have originated from a marine surveyor, Captain Timothy Vincent, who Snopac had previously hired to appraise the Innovator for the purpose of obtaining insurance.

Snopac hired Captain Jacobsen to appraise the fair market value of the Innovator. The day after he was retained, and after inspecting the vessel for approximately two hours, Jacobsen valued the Innovator at $3 million. Greg directed Dahl to use $3 million for the value of the Innovator, and Dahl issued his final report. He concluded the fair value of the siblings' shares as of May 26, 2008 was zero, largely because the value of Snopac's assets was exceeded by its liabilities. At about the same time Dahl issued this report, Snopac submitted an insurance application for

coverage on the Innovator. In the application, Snopac expressly warranted that the "fair market value" of the Innovator was $9.1 million based on the Vincent appraisal.

Given the final Dahl report indicated the value of the minority shares was zero, Snopac and Greg Blakey believed it would be fair to redeem the shares of the minority owner siblings for $20,137.47. The shareholders' meeting occurred on May 26, 2008. Leslie Blakey Spencer and Tammy Blakey attended and voiced their objections. In June 2008, Leslie and Tammy retained Kevin Grambush to provide a preliminary opinion on the value of their shares. Grambush indicated the value of their shares was over $400,000 each. This number was based in part upon Grambush's valuation of the Innovator at $7.8 million. Grambush arrived at $7.8 million by taking the $9.1 million book value and depreciating based on a 15-year life of the vessel. Leslie and Tammy submitted a demand that Snopac redeem their shares at the price set by Grambush. Snopac filed suit for the purpose of determining the value of the dissenting shareholders' stock.

In April 2009, Snopac again retained Captain Vincent to appraise the Innovator for additional financial and insurance purposes. On May 29, 2009, Captain Vincent issued a report stating that the Innovator had a fair market value of $16.7 million.

In September 2009, the trial court appointed Robert Duffy of Grant Thornton, LLP to appraise Snopac as of the redemption date. Duffy issued three valuation opinions, first on December 1, 2009, then December 23, 2009, and finally on March 17, 2010. All three opinions indicated the value of the minority shares was zero. For the

December reports, Duffy relied on Captain Jacobsen's $3 million appraisal of the Innovator. Duffy also retained his own marine surveyor, Thomas Laing. Laing issued his report in early March 2010. Laing, like Captain Jacobsen, used a market appraisal of the Innovator. Laing valued the vessel at $5.5 million, although this appears to include $3 million in what Laing calls "crab processing rights." Duffy appears to have interpreted Laing's report as valuing the Innovator (without crab processing rights) at $2.5 million in his March 17, 2010 valuation of the minority Snopac shares. In any event, the March 17, 2010 Duffy report again valued the minority shares at zero.

At trial, the court heard testimony from each of the three valuation experts: Dahl (Snopac), Grambush (respondents), and Duffy (trial court). Snopac moved to exclude expert testimony by Captain Vincent regarding the value of the Innovator. The court denied the motion. The court rejected Dahl's valuation in large part because it relied upon Captain Jacobsen's valuation of the Innovator. The court did not find Jacobsen's valuation to be credible because he issued the valuation one day after being retained and after spending approximately two hours inspecting the vessel. The court found this to be in stark contrast to Captain Jacobsen's method for valuing a different vessel, the Stellar Sea, where Jacobsen spent over a month preparing his valuation. These findings are unchallenged.[1]

The trial court also rejected Duffy's reports. The trial court found that Captain Laing's valuation of the Innovator was flawed. Laing relied on only one comparable

[1] In its reply brief, Snopac "challenges" finding no. 41, but only to the extent the trial court found Captain Vincent's report credible. Snopac contends the report cannot be credible, because it was inadmissible.

sale to support his valuation of the Innovator at $5.5 million; an October 15, 2008 sale of the "Stellar Sea" for $5 million. The trial court rejected this value because Laing "did not consider or compare the Innovator's cost per pound or expense of processing fish and crab compared to the Stellar Sea." (FF no. 60). Laing acknowledged that was an important factor. Again, these findings are unchallenged on appeal.

The trial court ruled in favor of Leslie Blakey Spencer and Tammy Blakey. It set a value of $6,250,000 for the Innovator, and $350,706 as the value of the 10 percent interest in each of the siblings' shares. The court also awarded pre- and post-judgment interest, and attorney fees. Snopac appeals.

DISCUSSION

Admission of Vincent expert testimony. Snopac first argues the trial court erred by denying its motion to exclude the expert testimony of Captain Vincent as to the value of the Innovator. We reject this argument because Snopac has failed to designate relevant portions of the record for our review.

The appellant has the burden of complying with the rules and presenting a record adequate for review on appeal. In re Marriage of Haugh, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990). Failure to provide an adequate record precludes appellate review. Olmstead v. Mulder, 72 Wn. App. 169, 182-83, 863 P.2d 1355 (1993). Snopac contends on appeal that Captain Vincent's deposition testimony shows his methodology is not generally accepted, an argument the trial court rejected. Snopac, however, did not provide us with the excerpts of Captain Vincent's deposition that the

trial court had before it. In fact, Snopac never designated for review King County Superior Court sub. number 99, which is the declaration of Anthony Gewald to which the Vincent deposition excerpts were attached. Snopac twice attempted to designate Vincent's entire deposition transcript for review, but as far as we can discern, both of those attempts failed.[2] Additionally, Snopac designated only its own briefing; it failed to designate any response briefing or affidavits in opposition to the motion. Because Snopac has failed to provide us with an adequate record from below, we cannot review the claimed error. Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994); Olmsted, 72 Wn. App. at 183. Accordingly, we deny Snopac's appeal on this issue.

Jacobsen and Laing expert testimony. Snopac next argues that the trial court's rejection of Captains Jacobsen's and Laing's valuations of the Innovator is not supported by the record. With respect to Captain Jacobsen, Snopac focuses on a single phrase in finding of fact number 33, where the court found "from his testimony, it is unclear exactly how he reached his $3 million conclusion." Snopac contends that the record clearly establishes the basis for Jacobsen's conclusion.

But even if that particular sentence is not supported by substantial evidence, other findings support the trial court's decision. The court did not find Jacobsen's

[2] Snopac's July 10, 2011 designation of clerk's papers failed to identify a sub number or date filed for the Vincent deposition. Snopac's July 17, 2011 designation of clerk's papers incorrectly identified the Vincent deposition as "exhibit" 131D, an exhibit number that does not exist. As such, the deposition was never transmitted to this court directly from the superior court. Shortly before oral argument, counsel for Snopac sent what appeared to be a copy of the deposition transcript from counsel's office. It is not clear whether counsel for Snopac copied opposing counsel on the correspondence. Because the deposition transcript was not properly before us, we did not consider it.

valuation to be credible because he spent a relatively minimal amount of time and effort preparing the valuation in comparison to a previous valuation at a different vessel, the Stellar Sea. These findings are unchallenged and as such, they are verities on appeal. Zunino v. Rajewski, 140 Wn. App. 215, 220, 165 P.3d 57 (2007). We reject Snopac's argument of this issue.

Snopac also challenges particular sentences in the trial court's findings no. 61 and 68 regarding Captain Laing's use of the Stellar Sea as a comparable sale. Specifically, Snopac argues the trial court erred by finding the sale of the Stellar Sea was a "liquidation" transaction. Id. We reject this argument as well, because even if those findings are unsupported, finding no. 60 supports the trial court's decision. In that finding, the trial court rejected Laing's valuation because he "did not consider or compare the Innovator's cost per pound or expense of processing fish and crab compared to the Stellar Sea." Laing acknowledged that was an important factor.

The trial court's value for the Innovator was within the range of evidence. Even if the trial court had declined to make any findings about the limitations of Jacobsen's or Laing's valuations, it would nevertheless have been entitled to value the Innovator at $6.25 million because that value was within the range of evidence presented at trial.

Property valuation is a determination to be made by the trier of fact. Worthington v. Worthington, 73 Wn.2d 759, 762, 440 P.2d 478 (1968). As such, we do not substitute our judgment for that of the trial court on a factual dispute over the valuation of property. Worthington, 73 Wn.2d at 762. Substantial evidence supports a trial court's

valuation of property if it is within the range of evidence provided in the record. See In re Marriage of Mathews, 70 Wn. App. 116, 122, 853 P.2d 462 (1993); In re Marriage of Soriano, 31 Wn. App. 432, 435, 643 P.2d 450 (1982). It is up to the trial court to determine the weight afforded to testimony regarding valuation. Worthington, 73 Wn.2d at 763. The trial court may reject opinion testimony when valuing an asset and decide an issue "upon its own fair judgment." In re Marriage of Pilant, 42 Wn. App. 173, 178-79, 709 P.2d 1241 (1985). Accordingly, when parties offer conflicting evidence on the value of an asset, the trial court may adopt the value asserted by either party or any value in between. Soriano, 31 Wn. App. at 435.

Here, Captain Jacobsen valued the Innovator at $3 million. Captain Vincent valued the Innovator at $9.1 million in one report and at $16.7 million in a later report. Mr. Grambush valued the Innovator at $7.8 million. Additionally, when Snopac sought insurance, it expressly warranted that the "fair market value" of the Innovator was $9.1 million. Likewise, Snopac's own "book value" for the Innovator listed on its balance sheet was just under $9 million. The trial court's valuation of the Innovator at $6.25 million was thus within the range of evidence presented at trial.

Snopac cites Matthew G. Norton Co. v. Smyth, 112 Wn. App. 865, 51 P.3d 159 (2002) for the proposition that a valuation "must be based on customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring the appraisal." Snopac then claims that the trial court failed to write a specific finding of fact articulating exactly how the court arrived at

the figure $6.25 million. But nowhere in Matthew G. Norton Co. did this court make such a requirement for trial courts. Again, the trial court may reject opinion testimony when valuing an asset and decide an issue "upon its own fair judgment." In re Pilant, 42 Wn. App. at 178-79. Moreover, the court may adopt the value asserted by either party or any value in between. Soriano, 31 Wn. App. at 435. As is described above, the trial court's valuation of the Innovator was well within the range of evidence, and we will not disturb it.

Valuation of Innovator's equipment. Snopac next argues that the trial court erroneously double-counted the Innovator's equipment by including a separate line for processing "machinery and equipment" when that processing machinery and equipment was already factored into "all" of the expert reports. We disagree. Snopac's own balance sheet has the value of the Innovator separated out from the value of other equipment, and the total of the equipment listed on the Snopac balance sheet is $790,818 ($650,818 + $140,000) which is the exact number used by the trial court. Snopac cannot show the trial court intended to include all equipment and machinery in the $6.25 million figure. On this issue, all the trial court stated was the following: "The court accepts the recommendations of Mr. Grambush to a certain degree. The court concludes and values the Innovator at $6.25 million. Mr. Grambush was asked to re-calculate the value of the shares using a $6.25 million value of the Innovator . . . ." We reject Snopac's argument on this issue.

Valuation of the Dillingham plant. Snopac next contends that the trial court

erroneously valued the Dillingham plant. Snopac points to finding of fact 39, which indicates the value of the plant is $2.8 million, whereas the final attachment to the findings and conclusion values the plant at $3,229,302. We reject this argument because the value of $3,229,302 was within the range of evidence presented at trial. As Snopac admits in its reply brief, the $2.8 million figure used in finding of fact 39 is from Snopac's balance sheet as of April 31, 2008, whereas the final figure of $3,229,302 is from Snopac's own balance sheet as of May 31, 2008. Even if finding no. 39 was erroneous, the trial court's conclusion valuing the Dillingham plant at $3,229,302 was within the range of evidence presented at trial, and we therefore decline to disturb it. In re Soriano, 31 Wn. App. at 435.

Attorney fees. Snopac also argues that the trial court erroneously awarded attorney fees. The parties agree attorney fees in this dissenters' rights case are governed by RCW 23B.13.310. That statute provides in relevant part:

> (2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:
> or
> . . .
>
> (b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by chapter 23B.13 RCW.

RCW 23B.13.310(2)(b). Snopac contends (1) the trial court here failed to make any finding or conclusion indicating it acted arbitrarily, vexatiously, or not in good faith; and (2) in any event, the record would not support such a finding.

We disagree. The trial court did in fact, make findings regarding Snopac's attempt to stymie the dissenters' rights to fair value for their shares:

> 23. In March 2007, Mr. Blakey contacted an accountant at the Moss Adams firm, Mark Christopher, to find out how he could dilute the value of the minority owners' shares in order to force them out of the business.
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> 24. He did so because he was angry with the minority owners questioning him about his alleged improprieties in running Snopac.
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> . . . .
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> 32. Even though Snopac had the previous survey report completed by Captain Vincent on the vessel condition for insurance purposes, Petitioner chose to hire Captain Jacobsen to appraise the Innovator again but this time for the specific purpose of a stock redemption.
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> 34. Petitioner subsequently dictated the scope-limitation [on Dahl's dissenter share valuation] of the Snopac Innovator at $3 million based on Captain Jacobsen's two-hour evaluation. . . .
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> 38. Even though Snopac was significantly in debt, Petitioner made another unilateral business decision that further increased the debt-load of Snopac. In January 2008, Mr. Blakey and Snopac entered into an agreement by which Snopac would purchase a non-functioning fish processing plant in Dillingham, Alaska for $1.1 million. . . .
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> 39. Between January and April 2008, Snopac invested approximately $1.6 to $1.7 million to upgrade and equip the Dillingham plant so that it would become a functioning fish processing facility. The total amount spent by Snopac on the Dillingham plant in the five months prior to the May 26, 2008 redemption of the minority owners' shares was approximately $2.8 million.
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> . . . .
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> 42. When Mr. Blakey asked Moss Adams to "update" and "modify" its prior, October 2007 valuation of Snopac for the purpose of redeeming the minority owners' shares, Petitioner directed Moss Adams to use the $3 million Captain Jacobsen appraisal of the Innovator. Petitioner did not disclose to Moss Adams Captain Vincent's prior $9.1 million valuation of the Innovator. Moreover, Petitioner did not disclose to Moss Adams that Snopac had continued to use Captain Vincent's fair market value of $9.1 million

> for the Innovator to obtain financing for the business and insurance coverage on the Innovator.

All of these findings are undisputed and are verities on appeal. These findings, in turn, support the trial court's conclusion that Snopac breached fiduciary duties, misused corporate funds, and oppressed minority shareholders:

> [T]he Respondents had to prove that the misconduct reduced the value of their stock as of May 26, 2008, a burden of proof, which they met, in large part because of Petitioner's unilateral business decisions that resulted in the highest debt-load in Snopac's history one month prior to the redemption date.

In short, the trial court's findings show Snopac engaged in a scheme to dilute the value of the minority owners' shares in order to force them out of the business. Contrary to Snopac's argument, it is difficult to see how this behavior does not amount to bad faith "with respect to the rights provided by chapter 23B.13 RCW." RCW 23B.13.310(2)(b). As such, the trial court did not abuse its discretion in awarding fees and costs under the statue.

Snopac also argues the "business judgment rule" precludes the attorney fee award. But the business judgment rule simply immunizes corporate directors and officers from liability where (1) the decision to undertake the transaction is within the power of the corporation and the authority of management, and (2) there is a reasonable basis to indicate that the transaction was made in good faith. Scott v. Trans–Sys. Inc., 148 Wn.2d 701, 709, 64 P.3d 1 (2003). It has no application here, in this dissenters' rights action, where the trial court found the company's acts were undertaken in bad faith to infringe upon the dissenters' rights.

Snopac next contends that the fee award was inappropriate because it was

entered without findings and conclusions as to whether the fees were reasonable and necessary. The absence of an adequate record upon which to review a fee award will result in a remand of the award to the trial court to develop such a record. Just Dirt, Inc. v. Knight Excavating, 138 Wn. App. 409, 415-16, 157 P.3d 431 (2007). Findings of fact and conclusions of law are required to establish such a record. Id.

Here, although the parties thoroughly briefed the legal and factual basis for the respondents' fee request, the trial court did not enter findings and conclusions. As such, we must reverse the award of fees and remand for findings and conclusions.

Interest. Snopac further argues the trial court improperly awarded prejudgment and post judgment interest at a rate of 12 percent. Under RCW 23B.13.010(4), interest is to be paid "at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstance." Snopac contends it is undisputed that its principal bank loan rates are at 5.5 percent. The respondents appear to concede the argument, given they failed to address or mention it at all in their briefing. On remand, the trial court is to award interest at a rate of 5.5 percent.

Diminution in value of respondents' shares. Respondents cross-appealed the trial court's denial of their post-trial motion seeking additional damages for diminution in the value of their shares. Specifically, respondents argue that the "increase in debt load due to Petitioner's unilateral decisions concerning the Innovator may be properly assessed as the $2.75 million difference between the $9 million invested by Petitioner

in the Innovator and the Innovator's value as of the redemption date of $6.25 million." As such, respondents argue that the award for the value of their 10 percent ownership interest in Snopac should be increased from the trial court's conclusion of $350,706 each to $625,706 each. We disagree for the reasons described herein.

Respondents are correct that under Sound Infiniti, Inc., ex rel. Pisheyar v. Snyder, 145 Wn. App. 333, 186 P.3d 1107 (2007), aff'd Sound Infiniti, Inc. v. Snyder, 169 Wn.2d 199, 237 P.3d 241 (2010), the diminished value of dissenting shareholder stock may be taken into consideration in an appraisal action:

> A similar scope of proceeding applies in Washington appraisal actions. In valuing the shares of an ousted shareholder, the court overseeing an appraisal action brought pursuant to chapter 23B.13 RCW may account for all prior reductions in the value of those shares caused by actual breaches of fiduciary duty, including the extraction of unreasonable salaries, misuse of corporate funds, or other self-dealing. Put another way, in order to ascertain the present value of the dissenting shareholder's interest in the corporation, the court may consider any majority shareholder misconduct affecting the minority shareholder's interest that occurred before the point in time that the appraisal-triggering transaction occurred. To be clear: the court is not limited to determining the value of the minority shareholder's interest at the fixed point in time when the appraisal-triggering action occurred, without reference to prior actions by the majority that may have resulted in that value being reduced.

Sound Infiniti, 145 Wn. App. at 349.

Respondents, however, have not shown that the trial court failed to consider this in making its valuation. Here, the trial court denied respondents' post-trial motion seeking additional damages for diminution in the value. Respondents' sole argument on this issue is that the order denying the motion shows the trial court failed to consider diminution in value. We disagree. Although the order does not mention diminution, it makes it clear the court considered all of the respondents' evidence, presumably

including the evidence regarding diminution of the value of shares:

> The court has already considered all the evidence presented at trial to determine the value of respondents' shares, as reflected in the June 1, 2010, Findings of Fact and Conclusions of Law. The court's conclusion of the value was based on the asset approach. The law does not require a court to conduct both a "fair value" and an "asset value" approach to determine the value of the stock as of the redemption date; therefore, respondents' motion is DENIED. (Emphasis added.)

Moreover, as is described above, the trial court concluded that Snopac breached fiduciary duties, misused corporate funds, and oppressed minority shareholders, thereby reducing the value of minority shareholder stock. We conclude the trial court did not fail to consider the diminution in value of respondents' stock, and therefore reject their arguments on this issue.

Fees and costs on appeal. Respondents seek fees and costs on appeal. Under RAP 14.2, the party that substantially prevails on appeal is entitled to an award of costs. The prevailing party may also be granted reasonable attorney fees on appeal if the party was entitled to fees below. RAP 18.1(a). We affirmed the trial court's award of attorney fees, and the respondents substantially prevailed in this appeal. As such, we award the respondents costs and reasonable fees on appeal.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

Specht, A.C.J.

WE CONCUR:

Duyr, J.

Ellington, J.