

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

**DIVISION II**

In re Marriage of:

No. 40428-1-II

MICHAEL A. WELLS,

Respondent,

UNPUBLISHED OPINION

v.

MICHELLE R. WELLS,

Appellant.

Armstrong, J. — In light of his deteriorating health condition and loss of employment, Michael Wells moved to terminate his spousal maintenance obligation to his ex-wife, Michelle (Wells) Helland. Although the trial court did not grant Wells’s motion in full, it reduced Helland’s maintenance by half. On appeal, Helland argues that the trial court erred in reducing her support because Wells still has the ability to pay the higher support. Because the trial court did not abuse its discretion in reducing the maintenance award, we affirm.

**FACTS**

Wells and Helland married in 1988, separated in 1998, and divorced in 2000. In their dissolution decree, the trial court granted Helland spousal maintenance of \$1,373.40 per month for 15 years. The court also provided that either party could move to modify maintenance every three years without showing a substantial change in circumstance.

Both Helland and Wells have serious and debilitating health conditions. Helland has multiple sclerosis, diagnosed during the marriage, and a back injury that prevent her from being employed. During the divorce proceedings, Wells stipulated that Helland’s multiple sclerosis was progressive; her back injury was accompanied by chronic back pain; she could not support herself

through regular employment; and she would be disabled for the remainder of her life. Her only income is maintenance paid by Wells.

In 2004, Wells suffered his first heart attack. In 2005, after his second heart attack, he had an unsuccessful triple bypass surgery. He had a second unsuccessful surgery in 2008, after a third heart attack. Then, in 2009, Wells was approved as a candidate for a cardiac transplant. Because of his heart condition he can no longer work, and in February of 2009, he was placed on short term disability.

In 2006, Helland petitioned the court to increase her maintenance due to her inability to pay for medical prescriptions not covered by insurance. The court ordered an increase of \$155 per month.

On June 11, 2009, Wells moved to terminate maintenance, claiming that he was unable to meet his maintenance obligations due to his health issues. In his declaration to the court, he asserted that “I have used a fair portion of my 401(k) to pay my monthly obligation to Ms. Helland.” Clerk’s Papers at 234. Helland responded that Wells has other assets from which he can pay the maintenance. Acknowledging Wells’s medical disability and Helland’s continued need for maintenance, the commissioner denied the motion without prejudice and ordered Wells to furnish the court with comprehensive financial information, including a copy of his bank statements for a one year period of time, receipt of disability payments, a sworn statement regarding his inability to draw from his retirement account, a copy of his 401K statements, and proof of investment accounts.

Wells submitted a number of the financial documents requested by the commissioner. The

commissioner then denied Wells's motion to terminate maintenance, finding that he had the ability to pay given his financial resources. Wells moved for a revision of the commissioner's ruling. The trial court found that because of his medical condition, Wells was no longer able to maintain employment, that his income had been approximately halved, and that his expenses continued despite the reduction in income. The court then weighed Wells's ability to pay against Helland's continued need, reasoning:

The circumstances have changed dramatically, and maintenance—an ability to pay maintenance in my opinion should focus more on income rather than simply using up a savings account which is what's happening in this case.

Again, both have unfortunate circumstances here. But and I do find that there is an ability to pay but I think \$750 is more in line with the circumstances of the parties. Ms. Helland will still be able to—with some difficulty, will be able to meet her needs. Mr. Wells is still going to have difficulty even with the 750. So, this is simply a situation where both parties have needs that cannot be met totally with their—the financial resources available to them.

Report of Proceedings (Jan. 22, 2010) at 14-15. Accordingly, the court reduced maintenance to \$750 per month.

## ANALYSIS

### I. Standard of Review

Helland challenges the trial court's revision of the maintenance award.<sup>1</sup> We review a modification order to determine whether substantial evidence supports the trial court's findings and whether the court's legal conclusions follow from its supported findings. *In re Marriage of Stern*, 68 Wn. App. 922, 928-29, 846 P.2d 1387 (1993). Substantial evidence supports a factual determination if the record contains sufficient evidence to persuade a fair-minded, rational person

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<sup>1</sup> When an appeal is taken from an order on a revision of a court commissioner's decision, the appellate court reviews the superior court's decision, not the commissioners. *In re Estate of Wright*, 147 Wn. App. 674, 680, 196 P.3d 1075 (2008).

of the truth of that determination. *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986).

Generally, a court can modify a maintenance award when the moving party shows a substantial change in circumstances that the parties did not contemplate at the time of the dissolution decree. *Wagner v. Wagner*, 95 Wn.2d 94, 98, 621 P.2d 1279 (1980). The dissolution decree here, however, provides that either party may move to modify maintenance every three years *without* establishing a substantial change in circumstance. Neither party contests this provision. Thus, we need review only the trial court's basis for the reduction in maintenance under RCW 26.09.090. *See Spreen v. Spreen*, 107 Wn. App. 341, 347 n.4, 28 P.3d 769 (2001) (modification cases primarily address whether substantial evidence supports a finding of changed circumstances, but once a court finds that modification is warranted, the issues of amount and duration are the same as in the original dissolution).

In awarding maintenance, the trial court exercises broad discretionary powers and we will not overturn the decision on appeal absent a showing of manifest abuse of discretion. *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984); *see also In re Marriage of Landry*, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985) (appellate courts are generally reluctant to interfere with the trial court's exercise of its equitable powers in dissolution cases). A trial court abuses its discretion when it makes a decision on untenable grounds for untenable reasons. *In re Marriage of Sheffer*, 60 Wn. App. 51, 53, 802 P.2d 817 (1990).

## II. Modification of Maintenance

Specifically, Helland challenges the trial court's finding of fact that Wells's expenses continue despite his reduction in income, arguing that no such evidence was presented to the

court. She also challenges the following conclusions of law: (1) that maintenance is reviewed only on a need versus ability basis; (2) that because of Wells's medical issues, his ability to continue maintenance has been hindered; and (3) that even with the reduction in maintenance, her needs can still be met. She claims that the trial court should have accounted for factors other than just need versus ability under RCW 29.09.090; that despite Wells's loss of income, he retains the ability to pay maintenance through other assets; and that it is unrealistic to assume she can live on the reduced amount.

First, substantial evidence supports the trial court's finding that Wells's expenses continue despite his reduction in income. With his motion to terminate maintenance, Wells filed a financial declaration that included information about his 2009 monthly expenses. Including housing, utilities, food, transportation, health care, and personal items, his expenses totaled \$3,412.55 per month. In comparison, when Helland moved for an increase in maintenance in 2006, Wells's declared monthly expenses were \$3,810.27. Although Helland argues that Wells's financial declarations are self-serving statements, they were submitted to the court under penalty of perjury. Moreover, Wells submitted to the court a sampling of medical bills from hospitals and health care facilities from 2009, totaling over \$6,000.00. Wells's sworn statements as to his monthly expenses, in addition to evidence of medical expenses, are therefore sufficient to persuade a rational person that his monthly expenses continued throughout 2009.

Turning to the legal conclusions, the trial court did not abuse its discretion in reducing maintenance. RCW 26.09.090 sets forth a nonexclusive list of factors the court may consider in determining a spousal maintenance award. The statute provides:

- (1) In a proceeding for dissolution of marriage . . . , legal separation, declaration of

invalidity, or in a proceeding for maintenance following dissolution of the marriage . . . by a court which lacked personal jurisdiction over the absent spouse . . ., the court may grant a maintenance order for either spouse . . . . The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him . . ., and his . . . ability to meet his . . . 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 . . . skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage . . . ;
- (d) The duration of the marriage . . . ;
- (e) The age, physical and emotional condition, and financial obligations of the spouse . . . seeking maintenance; and
- (f) The ability of the spouse . . . from whom maintenance is sought to meet his . . . needs and financial obligations while meeting those of the spouse . . . seeking maintenance.

RCW 26.09.090. The only limitation on the maintenance award is that the amount and duration be just in light of all the relevant factors. *In re Washburn*, 101 Wn.2d at 178. “The court’s paramount concern is the economic condition in which a dissolution decree leaves the parties.” *In re Marriage of Williams*, 84 Wn. App. 263, 268, 927 P.2d 679 (1996).

Here, the trial court properly considered the relevant factors under RCW 26.09.090. Even though the trial court did not have to find a substantial change in circumstances, it was well within its discretion to consider only those statutory factors at issue in deciding whether to modify the

award. *In re Washburn*, 101 Wn.2d at 182 (“RCW 26.09.090 places emphasis on the justness of an award, not its method of calculation.”). And Helland argued no factors other than ability and need in opposing the motion to reduce or terminate. RAP 2.5(a). Thus, the trial court properly focused on ability and need in deciding the issue.

With respect to ability to pay, Helland argues that Wells has adequate resources to meet his spousal maintenance requirements as evidenced by his “comfortable life.” Br. of Appellant at 20. But she does not challenge the trial court’s finding that Wells’s monthly income has been approximately halved.<sup>2</sup> Instead, she claims that although Wells’s 401(k) and retirement funds had little value at the time of dissolution, the value of these assets has increased since the divorce.<sup>3</sup> She further contends that Wells misled the court when he claimed to be drawing from his 401(k) to pay maintenance; she claims that Wells did not withdraw money from that account until after he moved to terminate maintenance and there is no proof the money was withdrawn to pay maintenance. She also alleges that he was making “double payments” on certain debts, that he had \$11,000 in one bank account and \$9,000 in another at the time he sought termination, and that his bank statements show that he spends money eating out and working on his hobby cars. Br. of Appellant at 14, 18, 20. Simply put, in addition to his benefits of almost \$4,000 a month, she contends that Wells has nearly \$85,000 in assets, proving that his ability to pay maintenance

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<sup>2</sup> The record shows that Wells now receives at least \$2,203 per month in social security and \$1,918 per month from his Weyerhaeuser retirement plan. His base salary from Weyerhaeuser in 2006 was approximately \$6,500 per month. His trial counsel approximated his gross income while working at \$8,500 per month.

<sup>3</sup> The 401(k) plan, valued at \$385 at the time of separation, was awarded to Wells as part of the division of property. The plan was valued at \$77,534.18 on March 31, 2009. Withdrawals were made on February 25, 2009 (\$9,000 after tax) and November 3, 2009 (\$73,448.44 after tax).

has not been hindered.

But even if true, these assertions do not alter the fact that Wells had stopped working because of his health, his expenses remained about the same, his income had been substantially reduced, and he faces uncertain medical issues that could be costly. And the trial court did not rule that Wells was unable to pay any maintenance. Rather, it ruled that, in light of his medical issues, his ability to continue maintenance had been hindered. The record supports that Wells has a substantial medical condition. He has had three heart attacks since 2004, and two failed heart surgeries. Wells asserted in his declaration that heart transplants can cost anywhere between \$135,000 and \$287,000; he also submitted a sampling of medical bills from 2009 totaling over \$6,000. A trial court can consider the financial needs of a maintenance paying spouse in considering whether to modify maintenance. RCW 26.09.090(1)(f); *see also* 20 Washington Practice: Fam. and Community Prop., § 34.9 (2010-11) (the final statutory factors grants judges considerable discretion in taking into account the ability of the obligor to meet his or her needs and financial obligations while paying maintenance).

Finally, Helland claims it is unrealistic for her to live on \$750 a month. The trial court acknowledged Helland's continuing needs and noted that she will have difficulty with the new maintenance amount. But the court reasoned that "this is simply a situation where both parties have needs that cannot be met totally with their—the financial resources available to them." RP (Jan. 22, 2010) at 15. We agree. Although the court could have ordered Wells to continue paying full maintenance, this would undoubtedly reduce his 401(k) funds and impair his ability to pay future medical expenses. The trial court had to weigh these competing interests with the



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certain knowledge that the result would be unlikely to meet the needs of either party. Given Wells's medical condition, coupled with his inability to work and ongoing expenses, we cannot find that the trial court abused its discretion in balancing the parties' interests here.<sup>4</sup>

### III. Attorney Fees

Helland requests attorney fees on appeal. Although RCW 26.09.140 permits us to award attorney fees on appeal upon a showing of financial need, Helland failed to comply with RAP 18.1(c), which requires her to submit an affidavit of financial need at least 10 days before oral argument. This precludes her from an attorney fees award. *In re Marriage of Crosetto*, 82 Wn. App. 545, 565-66, 918 P.2d 954 (1996).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Armstrong, J.

I concur:

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Worswick, A.C.J.

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<sup>4</sup> Although the trial court did not focus on the length of the marriage or the status of the property, we note that most of Wells's 401(k) funds were accumulated after the parties separated and the parties were together for 10+ years. Both lend support for the trial court's exercise of discretion.

Hunt, J. (dissenting) — I respectfully dissent. I recognize the difficulty of setting a maintenance award that fairly accounts for the needs of two parties with medical and financial challenges and the broad discretion that we generally accord to the superior court. Here, however, I cannot join the majority in holding that the modification court adequately considered Helland's needs in reducing her maintenance far below a level necessary to meet even her basic needs, with no other available resources, while allowing Wells to meet his stated needs and, in comparison, generally to maintain his lifestyle without having to tap, immediately at least, other resources available to him.

In my view, the modification court unduly (1) focused primarily on the impact that Wells' reduction in income had on him in general without similarly considering the impact that maintenance reduction would have on Helland's ability to meet her basic living expenses, (2) failed to consider all the statutory factors under RCW 26.09.090 and to focus on them as they related equally to Helland's and Wells' circumstances, and (3) ignored the Legislature's stated general goal of trying to put the parties on somewhat equivalent economic footings, especially taking into account their respective circumstances. See *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997); *In re Marriage of Sheffer*, 60 Wn. App. 51, 57-58, 802 P.2d 817 (1990). I would remand to the modification court for further consideration of these statutory factors, especially as they pertain to the impact of maintenance reduction on Helland.

#### I. Standard of Review

As the majority acknowledges, a trial court has discretion in determining maintenance modification. The party who challenges a maintenance award must demonstrate that the trial

court “manifestly abused its discretion,” which occurs when it does not base its award upon a fair consideration of the statutory factors. *In re Marriage of Marzetta*, 129 Wn. App. 607, 624, 120 P.3d 75 (2005), *review denied*, 157 Wn.2d 1009 (2006), *abrogated on other grounds by McCausland v. McCausland*, 159 Wn.2d 607, 152 P.3d 1013 (2007). A maintenance award that is not based upon fair consideration of statutory factors, however, constitutes an abuse of discretion. *Spreen v. Spreen*, 107 Wn. App. 341, 347-50, 28 P.3d 769 (2001) (trial court did not give fair consideration to statutory factors when it gave incomplete attention to statutory factors and appeared to base its decision on non-statutory factors).

A trial court may grant maintenance in marriage dissolutions only after considering all statutory factors under RCW 26.09.090, which provides:

(1) In a proceeding for dissolution of marriage . . . , legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage . . . by a court which lacked personal jurisdiction over the absent spouse . . . , the court may grant a maintenance order for either spouse . . . . *The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering **all** relevant factors including but not limited to:*

(a) *The financial resources of the party seeking maintenance, including separate or community property apportioned to . . . her, and . . . her ability to meet . . . 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 . . . her skill, interests, style of life, and other attendant circumstances;*

(c) *The standard of living established during the marriage . . . ;*

(d) *The duration of the marriage . . . ;*

(e) *The age, physical and emotional condition, and financial obligations of the spouse . . . seeking maintenance; and*

(f) *The ability of the spouse . . . from whom maintenance is sought to meet his . . . needs and financial obligations while meeting those of the spouse . . . seeking maintenance.*

RCW 26.09.090 (emphasis added).

Of primary importance in determining a maintenance amount are the parties' economic positions following the dissolution.<sup>5</sup> *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 408, 433 P.2d 209 (1967). In making such determination, RCW 26.09.090(f) directs the court to consider “[t]he ability of the spouse . . . from whom maintenance is sought to meet his . . . needs and financial obligations *while meeting those of the spouse . . . seeking maintenance.*” RCW 26.09.090(f) (emphasis added).

“The standard of living of the parties during marriage and the parties' post-dissolution economic condition are *paramount concerns* when considering maintenance and property awards in dissolution actions.” *In re Sheffer*, 60 Wn. App. at 57-58 (reversing trial court’s inadequate maintenance award because trial court did not adequately consider primary statutory factors, especially in light of the disparity of parties’ monthly income) (emphasis added). *See also In re Marriage of Morrow*, 53 Wn. App. 579, 586, 770 P.2d 197 (1989) (citing *Washburn v. Washburn*, 101 Wn.2d 168, 181, 677 P.2d 152 (1984)<sup>6</sup>). As the majority acknowledges, these

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<sup>5</sup> Married for 10 years, Wells and Helland divorced in 2000. The dissolution court considered the length of their marriage as well as the other statutory factors, although the focus was on Helland’s health problems balanced against Wells’ ability to pay in setting maintenance at \$1528 per month.

<sup>6</sup> “Factor (4) [future earning prospects of each spouse] simply applies to the present context the long-standing rule that the economic condition in which a dissolution decree leaves the parties is a paramount concern in determining issues of property division and maintenance.” *Washburn*, 101 Wn.2d at 181.

considerations apply, the “same as in the original dissolution,” when the trial court is later asked to modify a previously ordered maintenance award. Majority at 4 (citing *Spreen*, 107 Wn. App. at 347 n.4).

## II. Modification of Maintenance

The dissolution court, which set the original maintenance amount, considered the extent of Helland’s progressively worsening multiple sclerosis and found that (1) this condition would prevent Helland from engaging in any employment for which she was reasonably qualified, and (2) she would not be able to support herself with a regular income in any way, except for the maintenance award from Wells. At the time of the dissolution hearing, Helland, who in addition to multiple sclerosis has chronic back pain, was paying \$550 for rent and approximately \$400 for food per month. In reducing Helland’s maintenance, the modification court took fully into account Wells’ medical costs associated with his heart transplant. In stark contrast, the record shows that the modification court did not similarly take fully into account Helland’s ongoing, and likely future escalating, medical costs associated with her irreversible, debilitating multiple sclerosis condition, particularly in light of her inability to earn a living and no available resources other than maintenance.

The record shows that the modification court considered Wells’ stated monthly needs for food, lodging, medical and expenses to justify its halving of Helland’s already modest maintenance. But despite assuring that Wells’ financial needs would be met, the modification court noted, somewhat dismissively, that Helland would “still [have] some difficulty” adjusting

to life on \$750 a month.<sup>7</sup> Report of Proceedings (RP) (Jan. 22, 2010) at 15. The modification court also failed to address in any realistic detail how Helland could have her financial and medical needs met without sacrificing her shelter, food, or health. In my view, the striking economic disparity of this outcome against the backdrop of the parties' health needs shows that the trial court did not fully consider and apply the RCW 26.09.090(a), (e) statutory factors, such as the "financial resources of the party seeking maintenance" and the "physical condition . . . of the spouse . . . seeking maintenance," in modifying Helland's maintenance; and, therefore, remand for further consideration is required.

The majority states that a trial court need not address all of the statutory factors under RCW 26.09.090 and may limit its inquiry to only those factors "at issue." Majority at 6. I disagree. Although case law has allowed the trial court to stress or to enter findings on only some factors, I have found no cases allowing the trial court to ignore any factors. On the contrary, the plain language of RCW 26.09.090(1) mandates consideration of *every* statutory factor. *See* RCW 26.09.090(1) ("The maintenance order *shall be* in such amounts and for such periods of time as the court deems just, . . . *after considering all relevant factors*") (emphasis added). *See also Washburn*, 101 Wn.2d at 182 ("Our concern is . . . its fairness *as determined by those factors set out in RCW 26.09.090*") (emphasis added). Although a trial court has discretion in using its equitable power to calculate maintenance, the trial court may not disregard the mandate of the source of such power, namely RCW 26.09.090. *In re Marriage of Matthews*, 70 Wn. App. 116,

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<sup>7</sup> For example, Wells asserted that the \$400 a month Helland spent on food was "not a realistic situation"; but the record shows in 2009, Wells claimed \$500 per month for his food, \$250 less per month than the \$750 per month the modification allocated to Helland for *all* of her expenses. Report of Proceedings (RP) (Jan. 22, 2010) at 4; *see* Clerk's Papers (CP) at 187.

123, 853 P.2d 462, *review denied*, 122 Wn.2d 1021 (1993). Thus, a trial court is not entitled to choose what factors to consider when the statute clearly dictates that all factors need to be considered.

The modification court appears to have based its reduction of Helland’s maintenance primarily on RCW 26.09.090(f), to which both parties refer as the “needs [versus] ability” factor.<sup>8</sup> The modification court found that, in light of Wells’ “hindered” ability to pay maintenance, reduction in maintenance from \$1528 to \$750 was appropriate. Clerk’s Papers (CP) at 517. In so doing, it gave short shrift to Helland’s basic needs and lack of other resources, while essentially protecting Wells’ multiple resources (such as his pension plan, Social Security, and 401(k) funds) by suggesting that he should not be required to delve into those resources to support himself. Thus, the record shows that the modification court did not adequately balance Wells’ ability to pay with Helland’s financial needs, as RCW 26.09.090(f) requires. On the contrary, the record shows that the maintenance reduction drastically diminished Helland’s ability to have even her most basic needs met, a burden that the modification court did not similarly impose on Wells.

RCW 26.09.090(f) expressly directs the court to consider “[t]he ability of the spouse . . . from whom maintenance is sought to meet his . . . needs and financial obligations *while meeting those of the spouse . . . seeking maintenance.*” (Emphasis added). The plain language of the statute thus places the needs of the spouse seeking maintenance on equal footing with the spouse paying maintenance. *See, e.g., Mayo v. Mayo*, 75 Wn.2d 36, 38-42, 448 P.2d 926 (1968);

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<sup>8</sup> RP (Jan. 22, 2010) at 14.

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*Fowler v. Fowler*, 71 Wn.2d 540, 543, 429 P.2d 881 (1967); *Stacy v. Stacy*, 68 Wn.2d 573, 575-77, 414 P.2d 791 (1966). A maintenance reduction that allows Wells to meet all of his financial and medical needs, but forces Helland to choose whether or not to buy food or to pay rent and medical expenses, does not adequately reflect the careful balancing mandated by RCW 26.09.090(f)<sup>9</sup> and the “just” result that post-dissolution resource allocation is supposed to achieve.<sup>10</sup> Dismissing cutting Helland’s only source of income by more than half with the remark that this would merely cause her “some difficulty” exemplifies the modification court’s failure to balance this statutory factor to achieve a fair result for both parties under these trying circumstances. RP (Jan. 22, 2010) at 15.

Although a trial court need not make specific findings of fact for every statutory factor, some sort of oral or documentary evidence is required to show that the trial court considered all relevant factors under RCW 26.09.090. *Murray v. Murray*, 28 Wn. App. 187, 189-90, 622 P.2d 1288 (1981); *In re Monkowski*, 17 Wn. App. 816, 818, 565 P.2d 1210 (1977). Here, the record does not show that the modification court considered all relevant statutory factors; on the contrary, as I explain above, the record suggests that the modification court considered exclusively one statutory factor—“needs [versus] ability [to pay]”<sup>11</sup>—and even then, gave disproportionate weight to Wells’ claimed inability to pay compared with Helland’s actual needs

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<sup>9</sup> See *In re Sheffer*, 60 Wn. App. at 57-58.

<sup>10</sup> “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 v. Bulicek*, 59 Wn. App. 630, 633, 800 P.2d 394 (1990) (citing *In re Morrow*, 53 Wn. App. at 585).

<sup>11</sup> RP (Jan. 22, 2010) at 14.



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and inability to meet them with a sudden, more than fifty-percent reduction in maintenance.<sup>12</sup>

Accordingly, I would remand to the trial court to reconsider Helland's maintenance according to all RCW 26.09.090 factors and to give equal consideration to Helland's needs and inability to meet them other than with maintenance.

I dissent:

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Hunt, J.

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<sup>12</sup> As Division Three of our court noted in *Bulicek*, 59 Wn. App. at 633-34:

The reality is that Janet does not live on income close to the income that supported the couple's standard of living during marriage and will likely never achieve the post-dissolution economic level of George. Here, after a long-term marriage, Janet is in ill health and has limited job skills and experience.