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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Marriage of ERIC BRADLEY EDWARDS, Appellant, and JUDITH LYNN EDWARDS, Respondent/Cross Appellant.	)	No. 36247-7-III UNPUBLISHED OPINION

SIDDOWAY, J. — Eric Edwards appeals and Judith Edwards cross appeals the decree and judgments entered in dissolving their 32-year marriage. We find no error or abuse of discretion other than a failure by the trial court to provide reasons for its decision to impose interest of only 4 percent per annum on two of Judith's judgments against Eric.[1] We decline to award attorney fees on appeal. We remand with directions to the trial court to provide reasons for the judgment interest rate.

[1] Given the common last name, this opinion refers to the parties by their first names for clarity. No disrespect is intended.

FACTS AND PROCEDURAL BACKGROUND

Eric Edwards and Judith Edwards separated after 32 years of marriage. Eric petitioned for dissolution in August 2015. Both parties were in their mid-50s at that time. Eric had always worked in the fruit business and during the marriage became an equal one-third partner with his two brothers in Chief Orchards Partnership, which operated a single apple orchard on leased land. The brothers later became equal members of Chief Orchards Packing & Storage Company, LLC. The brothers formed two more equally-owned limited liability companies (LLCs) in 2012 and 2015 upon acquiring or taking over operation of additional orchards. We refer to the Edwards brothers' jointly-owned entities collectively as "Chief."

Judith worked full time as a registered nurse during the early years of the marriage. After the couple's children were born, she worked full time for a couple of years but for the most part worked part time or on call. Shortly after the petition for dissolution was filed, Eric was ordered to pay Judith temporary maintenance of $3,700 a month and Chief was required to continue paying the type of personal expenses it had covered for the Edwards brothers and their wives during Eric's and Judith's marriage.

The value of Chief was the most significant issue in contention in the divorce trial. Chief's value consisted not only of its own orchards and operations, but also of Chief's one-third membership interest in Frosty Ridge Orchards, LLC and Frosty Packing

Company, LLC (collectively "Frosty"), acquired in 2010. The controlling two-thirds interest in Frosty is held by Martinez Fruit, LLC.

In November 2017, several months before the dissolution trial, Frosty sued Chief and the Edwards brothers along with their wives. The complaint alleged that Chief had breached its fiduciary duties and sought an accounting and judicial dissolution. Up until that time, Eric had managed 1,700 acres of orchards owned by Frosty for a gross monthly income of $7,833, but Frosty terminated his employment when it filed suit.

At the time of trial, Chief directly owned three orchards totaling around 250 acres. Eric continued to manage Chief's orchards, for which he had formerly been paid a monthly draw of $7,000 a month, except during periods when he and his brothers ceased taking or reduced their draws. With the termination of Eric's employment by Frosty, Chief increased his monthly draw to $10,000. Chief also continued to pay for health insurance, car insurance, vehicle expenses, cell phones and country club dues for the Edwards brothers and their wives.

It was the position of both parties at the dissolution trial that the community's one-third interest in Chief should be awarded to Eric, as should the family home, which Judith's lawyer characterized as "Mr. Edwards' baby." Report of Proceedings (RP)[2] at 21. The parties agreed that the family home had a value of $545,000. The values they

[2] Citations are to the report of proceedings that includes the three-day, February 2018 trial.

placed on the community's one-third interest in Chief were dramatically different, however.

Judith retained Kevin Grambush, a certified public accountant accredited in business valuation, to value the community's interest in Chief. She retained him in the fall of 2016 and using tax returns, financial statements and other information made available to him, he prepared a report of value in April 2017. It used a valuation date of December 31, 2015. Given the separate operations of Frosty and the Chief orchards, he prepared a standalone value of Chief's one-third interest in Frosty as an appendix to his report. Using an income approach (specifically, the capitalized earnings method), he placed a value of $8,465,000 on Chief's interest in Frosty.

Applying the income approach to Chief's other operations and assets, Mr. Grambush arrived at a capitalized earnings value of $939,524. He determined the net value of its tangible assets to be higher than that, however. He therefore valued Chief's non-Frosty assets and operations using the asset approach. He arrived at a total value for the community's interest in Chief of $4,007,000.

At the trial taking place in February 2018, Eric, as plaintiff, went first, and rather than call an expert, he relied on his own testimony as to Chief's value. He began by testifying that he believed the value of his interest in Chief's non-Frosty assets and operations was $313,174.67, explaining, "basically I'm agreeing with what [Mr. Grambush's] analysis was of it," and "I think that's probably a good number." RP at

119. The $313,174.67 figure was the value of the community's one-third interest in the *income approach* valuation of $939,524.00 that Mr. Grambush calculated but then rejected in favor of an asset approach, however.

Eric testified that he disagreed with Mr. Grambush's $8,465,000 valuation of Chief's interest in Frosty. Asked by his lawyer, "what do you think your interest in Frosty's worth?," Eric answered, "Around 750,000." RP at 120. The figure was never explained, although Eric testified that Martinez Fruit held the controlling interest in Frosty; he did not believe Martinez Fruit was acting in good faith and would not treat Chief fairly in trying to resolve the lawsuit it had filed; and Chief was unable to appoint managers, determine management compensation, set policy, or acquire or liquidate assets for Frosty. Eric also believed Frosty's packing operation was not being run efficiently and was losing business from growers. The court sustained objections that some of Eric's testimony on this score was hearsay or lacking in foundation.

Eric testified that while Chief was allowing him to take $10,000 monthly draws, the money was coming from Chief's operating line and he did not know if it could be sustained by operations.

Under Eric's proposed property division, he would receive the community's interest in Chief and would pay Judith $454,000. He testified that he did not have cash or assets that he could use to pay that amount immediately, but depending on Chief's future operations, he believed he would be able to make annual payments of $20,000 to $30,000

toward the obligation. He acknowledged that he was behind in paying Judith's court-ordered $3,700 per month in temporary maintenance. He was cross-examined about nonessential expenses he had incurred at times when he claimed to be unable to meet basic living expenses and his maintenance obligation.

In Judith's case, Mr. Grambush testified to his valuation of the community's one-third interest in Chief, including Chief's one-third interest in Frosty. He testified that for both entities, he considered an asset approach, a market approach, and an income approach. He explained why he used an income approach in valuing Frosty but used an asset approach in valuing Chief's non-Frosty assets and operations.

Judith testified that she continued to work 24 hours a week and hoped to be able to work to age 60. She testified that she might be able to work more hours but was concerned about the physical toll it would take. She testified that she suffered from chronic back pain, had undergone a spinal fusion in 2012, and was required by her work to assist in moving often-obese patients. Her testimony that she often suffered pain from her work was corroborated by a coworker whom she called as a witness.

Judith testified that she lived in a townhouse purchased after the parties separated, and that she had 401k and 403b plans retirement accounts with a total value of slightly less than $120,000 through her work. She testified that she was no longer making retirement contributions and that Eric owed her past-due maintenance of $43,800.

At the conclusion of the evidence and argument, the trial court took the matter under advisement, filing a memorandum decision the next day. It awarded Judith maintenance that was reduced from the temporary $3,700 a month to $2,500 a month. It explained the maintenance award as follows:

> The parties agreed during their marriage that she could work 24 hours a week because they did not need the money. And, given her physical restraints, this is what she is currently capable of working. She is in need of maintenance. Having reviewed Mr. Edwards' history of spending, tax returns and access to funds through Chief (it is not clear what access to funds he has from Washington Gold or other entities if any) as well as Chief's ability to acquire $1.6 million in additional acreage, it is clear to the court that he has the ability to pay maintenance in the amount of $2,500 per month until Mrs. Edwards turns 65 years of age.

Clerk's Papers (CP) at 28. The court further ordered that "[f]or any month that he does not make payment on the judgment which will be entered to equalize the parties' estates, he shall be required to pay Mrs. Edwards $3,500 per month." *Id.*

The court acknowledged Eric's testimony that the value of his interest in Chief was worth only $750,000, but rejected his opinion in favor of Mr. Grambush's valuation and testimony, which the court found to be "well-reasoned and credible, based upon prevailing business valuation standards for similar agricultural businesses." CP at 29.

The trial court awarded Judith $25,000 to be applied toward her attorney and expert fees and costs, which the court estimated would exceed $80,000, finding that "Mrs. Edwards has need and Mr. Edwards has the ability to pay a portion of Mrs. Edwards professional fees and costs." CP at 30.

The court summarized the values awarded and its calculation of an almost $2 million equalizing obligation to Judith as follows:

Wife's Assets	$177,878.09
Wife's Debt	$33,000.00
Total	$144,878.09
Husband's Assets	$4,622,770.92
Husband's Debt	$553,034.00
Total	$4,069,736.92
Total Community Estate	$4,214,615.01 divided by 2 = $1,962,492.41

Lien to Wife: $2,107,307.50 - $144,878.09 = $1,962,492.41 (at 50% of community)

See CP at 35. The summary provided that Eric's obligation for the amount should bear interest at 4 percent per annum and be paid off monthly over the course of 20 years.

At the hearing for presentment of the findings and conclusions, decree and judgments, Eric asked the trial court to reduce the interest on his liability for Judith's past due maintenance and attorney fee award from the 12 percent legal rate to the 4 percent rate imposed on the equalizing obligation. The trial court agreed to impose a 4 percent rate on the attorney fee award but said that the past due maintenance would continue to bear interest at the legal rate.

Ten days later, Eric moved for reconsideration of the maintenance award, the valuation of Chief, and for the first time suggested that the trial court "should have . . . divided the shares in Chief to both parties instead of stacking a large number on

Petitioner's side of the worksheets." CP at 76. The trial court denied Eric's motion for reconsideration without requesting a response or entertaining argument.

Eric appeals and Judith cross appeals.

ANALYSIS

Eric makes 15 assignments of error (AE). We have organized and address them as presenting five issues:

- Is the $4,007,000 value placed on the community's interest in Chief supported by the evidence? (AE 1-6),
- Did the trial court err or abuse its discretion in denying Eric's motion for reconsideration? (AE 7),
- Did the trial court abuse its discretion in awarding maintenance to Judith? (AE 8-10, 12),
- Did the trial court err in imposing additional maintenance in periods during which Eric fails to make payments toward the equalizing obligation? (AE 11), and
- Did the trial court err in awarding Judith $25,000 in attorney fees? (AE 13-15).

Judith cross appeals, arguing that the trial court erred in awarding less than the statutory 12 percent legal rate of interest on the judgments for the equalizing obligation and fee awards. We address the issues in the order stated.

APPEAL

I. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S VALUATION OF THE COMMUNITY'S INTEREST IN CHIEF AT $4,007,000

Eric challenges the trial court's finding that the value of the community's one-third interest in Chief was $4,007,000, contending that the court improperly

- limited the minority discount to the value of Chief's interest in Frosty to 5 percent and applied no minority discount to the community's interest in Chief,
- failed to apply a marketability discount to Chief's interest in Frosty,
- failed to apply a marketability discount to the community's interest in Chief,
- applied a factor "to enhance the value of the income . . . based on an assumption that [the] income was received equally throughout the year,"
- failed to consider any impact of the Frosty litigation and ignored the impact of the dissolution litigation and lockout of the Edwards brothers, and
- used a December 31, 2015 valuation date.

Br. of Appellant at 3-5.

The trial court's $4,007,000 value for the community's interest in Chief was the value arrived at by Mr. Grambush, whose testimony the trial court found to be well-reasoned and credible. As required by case law, the trial court set forth in its memorandum decision the factors and method used by Mr. Grambush in reaching his finding of value, with which the trial court agreed.

We apply the substantial evidence standard of review to findings of fact made following a dissolution trial. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). Where the trial court has weighed the evidence, the reviewing court's role is simply to determine whether substantial evidence supports the findings of fact, and if so, whether the findings in turn support the trial court's conclusions of law. *Id.* (citing *In re Marriage of Greene*, 97 Wn. App. 708, 986 P.2d 144 (1999)). A court should "not substitute [its] judgment for the trial court's, weigh the evidence, or adjudge witness

credibility." *Greene*, 97 Wn. App. at 714 (citing *In re Marriage of Rich*, 80 Wn. App. 252, 259, 907 P.2d 1234 (1996)).

When it comes to expert opinion, the fact finder has broad latitude in determining the weight to accord. *In re Marriage of Harrington*, 85 Wn. App. 613, 637, 935 P.2d 1357 (1997). If the trial court's decision falls within the range of expert testimony given at trial and is reasonable, the decision is based on substantial evidence and will be affirmed upon appeal. *Id.* (citing *In re Marriage of Sedlock*, 69 Wn. App. 484, 491-92, 849 P.2d 1243 (1993)).

Eric's challenge to the trial court's valuation of his interest in Chief ignores evidence supporting the trial court's decision and the standard of review.

Minority discount. Both in his report and his testimony at trial, Mr. Grambush explained the need to make appropriate discounts for minority business interests and how he arrived at the discounts he used in valuing Chief's interest in Frosty and the community's interest in Chief. With respect to the valuation of the community's interest in Chief, he explained that the Edwards brothers "typically act in concert in the day-to-day management of the Company and in making important decisions," with the result that it was not necessary to include a discount for lack of control. Ex. R4.1 at 8. As for the valuation of Chief's interest in Frosty, his analysis of historical distributions revealed approximately 99 percent of available cash was distributed to shareholders, supporting a minority discount based on historical economic disadvantage of only 1 percent. He

increased this to 5 percent, however, because a one-third ownership interest "carries the potential risk of future disagreements or economic . . . disadvantage" not reflected in the historical discount indication. RP at 301. Substantial evidence supports his discount rate.

Marketability discount. There was no evidence presented that a marketability discount was required or even a factor to be considered where Mr. Grambush's opinion of value was based on the capitalized earnings method, in the case of the interest in Frosty, and an asset-based approach in the case of Chief's other assets and operations. Indeed, the word "marketability" came up only once during trial—when Eric's counsel told Mr. Grambush that his questioning was "not . . . about lack of marketability," but "about control." RP at 306.

Midyear convention. Eric challenged Mr. Grambush's application of a midyear convention with counsel's questions, but not with evidence. Mr. Grambush testified that application of a midyear convention was appropriate because without it, the capitalized earnings method treats all income as received on the last day of the year, which is not the case—and Eric presented no evidence that it *was* the case. Contrary to Eric's statement of the issue, the midyear convention does not adjust value "based on an assumption that income was received equally throughout the year," Br. of Appellant at 4; it adjusts value based on an assumption that as much income is received in the first part of the year as is received in the last part of the year.

Mr. Grambush stood by his use of the convention, recognizing that for orchard operations, harvest takes place at one time but revenue comes in at different times, as crops are sold. A prior year's crop will often be sold during the first half of the year.[3] Eric did not dispute that Frosty's packing revenue (38.62 percent of its revenue in 2015) comes in throughout the year.

Impact of Frosty lawsuit and lockout. Eric challenges the trial court's failure to consider the impact of Frosty's lawsuit and lockout, but as the trial court pointed out in its memorandum opinion, Eric's only evidence on that score was his self-serving testimony that because he and his brothers were being excluded from management, the value of the business was suffering. The trial court acknowledged Eric's testimony but rejected it. We defer to the trial court's assessment of its credibility and weight.

Eric's position also invited the trial court to assume that the judicial outcome of the Frosty lawsuit would be unfair to the Edwards brothers' interests. This was an assumption the trial court understandably refused to make. Mr. Grambush had reviewed the Frosty complaint and amended complaint, which he testified did not affect his opinion

[3] Eric's counsel appears to assume that if crop proceeds are received the year following harvest, application of the midyear convention artificially inflates value. No expert testimony was presented to support counsel's thesis. The lag time is irrelevant to the valuation. Consider the 2015 crop, sold in 2016. Without applying the midyear convention, proceeds from the 2015 crop sold in May 2016 would be treated as if received on December 31, 2016. Application of the convention merely treats the proceeds as if they were received in mid-2016. It does not treat them as if received in mid-*2015*, as counsel appears to assume.

of value. And he testified that a possible outcome of the litigation could be a buyout of Chief at the price dictated by the operating agreement, which was net tangible asset value less 10 percent. Pointing to Frosty's financial statements, he testified that the total net adjusted book value reduced by 10 percent would be between $26 million and $26.1 million—making Chief's one-third interest worth over $8.67 million.

Valuation date. Finally, Eric challenges Mr. Grambush's use of a December 2015 valuation date. Mr. Grambush was retained in the fall of 2016, so year-end 2015—a date that followed the parties' separation and Eric's filing for dissolution—was an obvious choice. Notably, it has been argued that assets should be valued as of the date of separation rather than a later date. *See, e.g.*, *Koher v. Morgan*, 93 Wn. App. 398, 404-05, 968 P.2d 920 (1998). Washington cases construe the dissolution statutes as giving courts in divorce proceedings broad discretion to pick an evaluation date that is equitable, however. *Id.* at 404 (citing *Lucker v. Lucker*, 71 Wn.2d 165, 167-68, 426 P.2d 981 (1967)).

Eric argues it was unreasonable to use a pretrial valuation date given "substantial changes in circumstances" that had taken place, Br. of Appellant at 5, but Eric was free to present his own expert's opinion of value for a later date, or evidence of the impact on value of substantial changes. It was entirely proper for the trial court to rely on Mr. Grambush's opinion of value as of year-end 2015.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ENTERTAIN THE MOTION FOR RECONSIDERATION

Eric next contends that "[t]he trial court erred in awarding the entire community interest in Chief to Mr. Edwards in lieu of dividing ownership." Br. of Appellant at 5. At trial, Eric agreed with Judith's testimony that she was never actively involved in the fruit businesses and he asked that the court allocate the community's entire interest in Chief to him. His first suggestion that the court divide ownership was in his motion for reconsideration.

CR 59 provides that on the motion of an aggrieved party the court "may" vacate an interlocutory order and grant reconsideration. "The trial court's discretion extends to refusing to consider an argument raised for the first time on reconsideration absent a good excuse." *River House Dev. Inc. v. Integrus Architecture, P.S.*, 167 Wn. App. 221, 231, 272 P.3d 289 (2012) (citing *Rosenfeld v. U.S. Dep't of Justice*, 57 F.3d 803, 811 (9th Cir. 1995) (applying parallel federal rule), *cert. dismissed*, 516 U.S. 1103 (1996)). We review a trial court's denial of a motion for reconsideration for abuse of discretion.

It is generally held that absent consent of the spouses, a court abuses its discretion and fails to perform its statutory duty to make a distribution of property if the court decrees that the spouses remain in common ownership of property following dissolution of their marriage. 20 WASHINGTON PRACTICE, FAMILY & COMMUNITY PROPERTY LAW § 32:28, at 242 (2d ed. 2015) (citing, among other cases, *Bernier v. Bernier*, 44 Wn.2d

447, 267 P.2d 1066 (1954) and *Shaffer v. Shaffer*, 43 Wn.2d 629, 630, 262 P.2d 763 (1953)). Compelling reasons would have to be shown for the trial court to have made an exception in this case. Careful consideration would have to be given to whether and how Judith's interests could be protected if her most substantial asset postdissolution was a passive interest in an entity her soon-to-be-ex-husband and his two brothers operate by consensus.

Eric offers no good excuse for his failure to raise this extraordinary proposal at trial. The trial court did not abuse its discretion in summarily refusing to consider it.

III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING MAINTENANCE TO JUDITH

Eric contends that in awarding maintenance, the trial court failed to consider Judith's need for maintenance or his ability to pay.[4] He also argues that the trial court's maintenance award was either an improper "placeholder" award or constitutes "double dipping." Br. of Appellant at 34-36. The latter two arguments are easily dispensed with and are addressed first.

[4] Eric's opening brief asserted that the trial court erroneously relied on a finding that Judith was only working 24 hours a week when she was in fact working 40.75 hours a week. Judith demonstrated otherwise in her response and Eric conceded in reply that his assertion that she was working full time was in error.

"Placeholder" and "double dipping" challenges

A "placeholder" maintenance award is a nominal award, unsupported by need and that is transparently a means of retaining jurisdiction so the court can award modified maintenance if circumstances change. In *In re Marriage of Rouleau*, for example, the court awarded a dollar a year in maintenance to a husband who had no current financial need but had a disability "'which may become a financial need should the—should something occur in the future.'" 36 Wn. App. 129, 130, 672 P.2d 756 (1983) (quoting the trial court's oral opinion). Such an award is improper because "the law in Washington mandates that a party seeking maintenance must demonstrate a need for support." *Id.* at 132. The trial court's award of maintenance to Judith has none of the characteristics of a placeholder award.

"Double dipping" occurs when a party is awarded half the value of a collection of assets and is then awarded maintenance on the basis of the proceeds that the sale of those assets will produce. An example is *In re Marriage of Barnett*, 63 Wn. App. 385, 388, 818 P.2d 1382 (1991), in which a retired couple owned an otherwise-inactive salvage operation that was in the process of liquidating its $200,000 inventory. The court held that it was error for the wife to be awarded both a $100,000 lien for her half of the salvage business and $500 monthly maintenance based on the proceeds to be realized from sale of the inventory. In this case, Judith's equalizing payment was based on the

year-end 2015 value of the community's interest in Chief, while Eric's ability to pay maintenance was based on his income to be earned in 2018 and thereafter. His post-dissolution earnings are not duplicative in any way of Chief's year-end 2015 value.

Alleged failure to consider need and ability to pay

Spousal maintenance is governed by RCW 26.09.090(1), which contains a nonexclusive list of factors to be considered, including, among others, the financial resources of the party seeking maintenance, the duration of the marriage, the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance, and the ability of the other spouse to meet his or her needs while meeting those of the spouse seeking maintenance. It is the prerogative of the trial court, rather than the appellate court, to weigh the factors. *In re Marriage of Zahm*, 138 Wn.2d 213, 227, 978 P.2d 498 (1999).

The evidence at trial was that Judith was working 24 hours a week at an hourly rate of $45.68, generating gross monthly income of approximately $4,550. Following the divorce, Judith would no longer share in Chief's profits or tax refunds and, unlike Eric, would no longer have any personal expenses paid for by Chief.

Eric was taking a draw from Chief of $10,000. Reducing his gross draw by the $2,500 in maintenance ordered would leave him with $7,500 gross. Adding the $2,500 in maintenance to Judith's gross earnings would leave her with $7,050 gross. In its memorandum decision, the trial court noted that Eric might also have ongoing access to

funds from Washington Gold, an orchard he owns with a son, in which Judith claimed no community property interest.

As Eric pointed out, his monthly $10,000 was a draw from Chief's operating line meaning that if Chief proved to have no profit, draws might need to be reduced or discontinued. In that event, however, tax losses would trigger tax refunds that would be distributed to the brothers. During the parties' 2.5 year separation, for instance, Eric and Judith received a total of $598,000 in tax refunds. And if Chief's operations were profitable, Eric could receive distributions beyond the $10,000 draw he had taken monthly. The trial court found from Eric's pattern of spending, tax returns, and access to funds through Chief, that $10,000 a month was not the extent of his access to funds. It found "it is clear . . . he has the ability to pay maintenance in the amount of $2,500 per month until Mrs. Edwards turns 65 years of age." CP at 59. Eric fails to demonstrate that the evidence of his pattern of spending, tax returns, and access to funds does not support the trial court's finding.

While the $2,500 a month maintenance obligation has the trial court's intended effect of moving Judith closer to Eric's monthly gross earnings, Eric argues that it fails to consider the $11,892 per month he is required to pay toward the equalizing obligation. He cites this court's decision in *In re Marriage of Kile and Kendall* for the proposition that "a trial court is not only permitted to consider the division of property when deciding to award maintenance, it is required to do so" and proposes a corollary that courts are

also required to consider debt that goes hand in hand with the division. 186 Wn. App. 864, 887, 347 P.3d 894 (2015) (citing *In re Marriage of Rink*, 18 Wn. App. 549, 552-53, 571 P.2d 210 (1977)). We do not disagree, but courts must not consider the debt and ignore the award of assets that made it necessary. Eric chose to ask to be awarded his interest in Chief as well as the family home and other assets. The trial court was not required to leave Judith with substantially less in value of community property over the next 20 years just because Eric's desire to receive and hold valuable assets left him with an asserted cash flow challenge.

The court's ultimate concern must be the parties' economic situations post-dissolution. *In re Marriage of Williams*, 84 Wn. App. 263, 268, 927 P.2d 679 (1996). Where, as here, the spouses were in a long-term marriage of 25 years or more, the court's objective is to place the parties in roughly equal financial positions for the rest of their lives. *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007). It is not required to place the parties in precisely equal financial positions at the moment of dissolution, however. *In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001). It may reach the objective of placing parties in roughly equal financial positions with a division that creates an immediate imbalance in one party's favor, recognizing that financial parity will be achieved in time. *In re Marriage of Wright*, 179 Wn. App. 257, 262-263, 319 P.3d 45 (2013).

In awarding an amount of maintenance that is supported by the statutory factors, it was not the responsibility of the trial court to explain how Eric could stay current on his equalizing obligation at the same time. That was an issue for Eric and his lawyer to consider before he asked to be awarded the parties' most valuable assets. We do note that if Frosty's request for judicial dissolution results in Chief being bought out for the $8.46 million that Mr. Grambush believes its interest is worth, or the $8.67 million required to be paid under the Frosty operating agreement, Eric's cash flow problem could be solved instantly.

We find no abuse of discretion.

IV. THE TRIAL COURT'S FINANCIAL CIRCUMSTANCE-RELATED ADJUSTMENT TO THE MAINTENANCE AMOUNT IS NOT AN ABUSE OF DISCRETION

Eric argues next that the additional $1,000 per month in maintenance ordered during periods when he is not paying installments toward the equalizing obligation is a "penalty," something that is "obviously not included as an allowed factor under RCW 26.09.090." Br. of Appellant at 33. Judith's need and Eric's ability to pay *are* statutory factors, however. RCW 26.09.090(1)(a), (f). The trial court could reasonably find that Judith's need for maintenance and Eric's ability to pay are directly correlated to whether Eric is making payments toward the equalizing obligation.

Eric cites no case law prohibiting a court from crafting a maintenance award that includes rational adjustments based on whether the party paying maintenance is

complying with property division provisions. "The trial court's discretion in [awarding maintenance] is wide." *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994) (citing *In re Marriage of Bulicek*, 59 Wn. App. 630, 634, 800 P.2d 394 (1990)). "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." *Id.* (citing *Bulicek*, 59 Wn. App. at 633).

As illustrated in our discussion of the cross appeal hereafter, if the trial court had wanted to penalize Eric, it could have declined to give him relief from the legal judgment rate on the equalizing obligation, thereby costing him almost $10,000 additional every month. In increasing Judith's maintenance in months when Eric is not making payments toward the equalizing obligation, the trial court was endeavoring to craft a just maintenance award.

V. ERIC DOES NOT DEMONSTRATE THAT AN AWARD OF $25,000 TOWARD JUDITH'S FEES WAS A MANIFEST ABUSE OF DISCRETION

Eric's final assignment of error is to the trial court's decision to award Judith $25,000 toward amounts she had paid or owed for attorney and expert fees. He does not dispute that Judith incurred the $80,000 or more in fees estimated by the trial court or their reasonableness. He acknowledges that the court stated a reason for its award. His only challenge is that there is no support for the court's stated reason, which was that Judith had a need and he had an ability to pay.

By statute, the court may, "after considering the financial resources of both parties . . . order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under [chapter 26.09 RCW]." RCW 26.09.140. In applying the statute, "the court balances the requesting party's need for a fee award against the other party's ability to pay." *In re Marriage of Ayyad*, 110 Wn. App. 462, 473, 38 P.3d 1033 (2002). The party challenging a trial court's award of fees under the statute must show that the court used its discretion in an untenable or manifestly unreasonable manner. *In re Marriage of Mattson*, 95 Wn. App. 592, 604, 976 P.2d 157 (1999).

Based on the court's summary of its division of assets, Eric left the marriage with $4 million in net assets before taking into consideration his equalizing obligation of $1,962,429, to be paid over 20 years. Judith left the marriage with $144,878 in net assets and the right to receive Eric's payments toward the equalizing obligation. Judith's payment of her attorney and expert fees up to the time of trial had been by using an inheritance and a portion of the parties' tax refunds.

Eric cites *In re Marriage of Wright*, 107 Wn. App. 485, 489, 27 P.3d 263 (2001) and *In re Marriage of Schnurman*, 178 Wn. App. 634, 644, 316 P.3d 514 (2013), as supporting his contention that the trial court abused its discretion in finding he had the ability to pay. In *Wright*, this court, in a single sentence, denied a wife's request for an award of attorney fees on appeal from her husband, a school district repairman. In the substantive part of the opinion, this court had affirmed the trial court's finding that the

husband's pension benefit had a present value of $39,400 based on his financial inability to retire before age 65. The decision did not disclose the facts in the husband's financial affidavit that caused this court to conclude that he was financially unable to pay his ex-wife's fees.

Schnurman likewise involved this court's denial of a wife's request for attorney fees on appeal; in that case, her request for a fee award in the trial court had been denied and was not appealed. Discussion of the facts of the case revealed that the husband's monthly income was $6,338, from which he was ordered to pay the wife $2,000 a month in maintenance and an additional $1,300 a month as a child support transfer payment. Nothing was revealed about the extent of his assets. *Wright* and *Schnurman* tell us nothing helpful.

The trial court was presented in this case with a husband in possession of millions of dollars of assets and a wife in possession of assets worth a small fraction of that amount. While the husband's payment toward an equalizing obligation over 20 years will bring the division of assets into equilibrium, it will not help Judith pay her fees now. Eric implies that the trial court's authority to award fees was limited by his existing cash flow, but he cites no supporting case law, and the statute itself provides that the fee decision is to be made "after considering the *financial resources* of both parties," not their cash flows. RCW 26.09.140 (emphasis added). Eric has not demonstrated that in

awarding Judith only $25,000 toward her fees, the court exercised its discretion in an untenable or manifestly unreasonable manner.

CROSS APPEAL

Judith argues the trial court erred when it failed to award the statutory maximum 12 percent interest on her fee award and equalizing judgments.

The controlling case is the decision of our Supreme Court in *Berol v. Berol*, 37 Wn.2d 380, 223 P.2d 1055 (1950), in which a trial court had refused to impose interest on a husband's deferred payment under a dissolution decree. The Supreme Court noted that the judgment interest rate at the time was 6 percent, and it saw "no good reason why the husband should have the use of the wife's money in his business without the payment of interest thereon." *Id.* at 382.

When the husband countered that prior decisions had authorized payment of a lower rate on deferred payments in a divorce case, the Supreme Court held that

> while in a divorce case the trial court may, in a proper exercise of its discretion, reduce the rate or eliminate interest entirely on deferred payments which are part of the adjudication of property rights, there should be *some apparent reason* for giving one spouse the use, for business purposes, of the money of the other without interest or at less than the statutory rate. *We see no such reason* in the present case.

Id. at 383 (emphasis added). Later decisions of this court have characterized *Berol* as requiring that the trial court "*give* adequate reasons" when it provides for less than the statutory rate. *E.g.*, *In re Marriage of Stenshoel*, 72 Wn. App. 800, 812, 866 P.2d 635

(1993) (emphasis added); *In re Marriage of Knight*, 75 Wn. App. 721, 731, 880 P.2d 71 (1994). Where reasons are not given, they have sometimes found an abuse of discretion and remanded with directions to impose the statutory rate of interest. *See id.*

Taking judicial notice of the interest rate environment for at least the last 10 years, there *is* an apparent reason why a trial court would impose a less-than-judgment rate of interest when the nature of a couple's assets require one party to buy out the other's interest over time: the 12 percent judgment rate far exceeds market rates. In June 2018, when the decree and judgments were entered, the prime rate was 4.89 percent.[5] Requiring the payment of 12 percent interest might force parties to liquidate a family home or business that one party or the other would like to keep. The trial court might have to contend with an argument that the party receiving the asset should receive it at a discounted value, given the above-market interest it is being ordered to pay. In this case, a 12 percent interest rate would increase Eric's monthly payments toward the equalizing obligation to more than $21,000.

Since there is an apparent reason for reducing the interest rate below 12 percent, we are unwilling to find an abuse of discretion and will not direct the trial court to impose the judgment rate. Since the 4 percent rate is below even the prime rate at the time of the

[5] *See, e.g.*, *Prime Rate History*—Monthly, FEDPRIMERATE.COM, http://www.fedprimerate.com/prime_rate_history-monthly.htm#top [https://perma.cc/59VT-G6AZ].

decree, however, we feel constrained to remand with directions to the trial court to provide its reasons for the 4 percent rate selected.

Judith requests an award of attorney fees and costs on appeal, relying on RAP 18.1(a) and RCW 26.09.140. We decline to award fees and costs on appeal.

We remand to the trial court with directions to provide its reasons for imposing interest at a rate of 4 percent on the equalizing judgment, and the attorney and expert fee judgment. We otherwise affirm.

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

Siddoway, J.

WE CONCUR:

Lawrence-Berrey, J.

Fearing, J.