

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

In the Matter of the Marriage of

DANIEL J. FARMER,

Petitioner

v.

TERESA W. FARMER,

Respondent.

NO. 83960-3

EN BANC

Filed September 8, 2011

STEPHENS, J.—This case involves a trial court’s method of valuing stock options in a dissolution proceeding. After separating, Daniel and Teresa Farmer entered into a stipulated agreement dividing their community assets, including several thousand stock options Daniel<sup>1</sup> had received from his employer during the marriage. Under the terms of the agreement, Teresa could decide when to exercise her share of the stock options. Before entry of the decree of dissolution, however, Daniel fraudulently exercised all of the options. The trial court was unaware of this

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<sup>1</sup> We refer to the parties by their first names for purposes of clarity, intending no disrespect.

when it awarded Teresa half of the community stock options in the final decree. When the facts came to light, Teresa moved for relief from the dissolution decree under CR 60(b), asking the court to invoke its equitable authority to award her damages for her loss. The court assessed damages based on the present value of the stock options as calculated by Teresa's expert witness. The Court of Appeals affirmed, deferring to the trial court's equitable discretion to make Teresa whole. We affirm the Court of Appeals and hold that the trial court did not abuse its discretion in calculating damages to Teresa.

#### FACTS AND PROCEDURAL HISTORY

Daniel and Teresa were married in August 1987 and accumulated significant community assets before separating in early 2004. During the course of the marriage, Daniel was employed at PACCAR. Beginning in April 1999, Daniel received PACCAR stock options on an annual basis, each with a set price and a ten-year expiration period. By the time of the parties' separation in 2004, Daniel had received approximately 15,000 stock options. The options had expiration dates between April 27, 2009 and January 15, 2013.<sup>2</sup>

After initiating the dissolution action and engaging in over two years of discovery, Daniel and Teresa filed a stipulated agreement with the court under CR 2A (CR 2A Agreement) resolving the parenting plan, child support, and the division of community assets. The agreement contained a specific provision equally

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<sup>2</sup> Under the terms of the PACCAR stock option plan, if Daniel were terminated for cause, the options would be forfeited. If he was terminated without cause or he resigned, he would have between one and three months to exercise the options.

dividing the community stock options Daniel had received from PACCAR. Because the options were nontransferable, they had to remain in Daniel's possession, but the agreement granted each party the right to choose when to exercise his or her share of the options.

In August 2006, approximately one month after filing the CR 2A Agreement with the court, Daniel unilaterally exercised all of the community stock options, including Teresa's share. He immediately sold the stock, netting \$444,664.63 after taxes and other expenses. Shortly after cashing in the options, Daniel e-mailed Teresa and attempted to persuade her to exercise her half of the stock options, which, unknown to her, no longer existed. He followed up with a similar e-mail a few weeks later. Teresa refused to authorize any exercise of her options.

In late September, Daniel moved for the court to enforce the parties' CR 2A Agreement and enter the final decree dissolving the marriage. Daniel did not disclose that he had unilaterally exercised all the stock options. Meanwhile, in response to a subpoena for Daniel's bank account records, Teresa discovered that approximately \$491,000 had been deposited into Daniel's account in August. The day before the court's scheduled hearing to finalize the dissolution, Teresa asked the court to continue entry of the final decree so she could investigate the source of the \$491,000 in Daniel's account. Opposing any delay, Daniel, through counsel, falsely advised the court that the \$491,000 represented proceeds from Daniel's exercise of *his* share of the PACCAR stock options. The court denied Teresa's motion to continue, but ordered Daniel to produce all documents regarding the August

exercise of the stock options. Daniel did not comply.

The court entered the decree of dissolution on October 13, 2006, dissolving the marriage and dividing the parties' community and separate property. The decree adopted the provision from the CR 2A Agreement that equally divided the PACCAR community stock options. Neither Teresa nor the court was aware the options had already been exercised and no longer existed.

Approximately two weeks later, Daniel, through new counsel, filed an affidavit admitting for the first time that he had cashed in all of the community stock options. Daniel moved to amend the decree to reflect that the options no longer existed. His motion proposed two alternative modifications to the decree as a way of preserving Teresa's interests. First, he offered to immediately distribute to Teresa approximately \$170,000, an amount reflecting her share of the proceeds from the August sale of the PACCAR stock. Second, he proposed depositing approximately \$190,000 into a trust account as a way of replicating Teresa's interest in the stock options. Under Daniel's proposal, Teresa could periodically choose to "exercise" the options as if they still existed, and proceeds from the trust account would be distributed to her according to the value of the PACCAR stock at the time of her "exercise."

With the revelation that Daniel had exercised her share of the options, Teresa moved for production of all documents related to the August sale. The court granted her motion, but Daniel again refused to comply. After being held in contempt, Daniel eventually produced the requested documents, which confirmed that he had

exercised all of the community stock options back in August. In March 2007, Teresa moved for relief from the decree under CR 60(b) and requested that the court “re-open the decree and award [her] additional property, assets, or such relief as the court deems just and equitable to compensate” for her loss. Clerk’s Papers (CP) at 147.

In support of her CR 60(b) motion, Teresa submitted a declaration from certified public accountant Ronald Nelson, who calculated Teresa’s losses from the wrongful exercise of her stock options to be \$617,553. Nelson arrived at this figure by analyzing the performance of PACCAR stock over the previous 10 years, which yielded an annual rate of return of 20.235 percent. Nelson explained in his declaration that “[i]f Ms. Farmer had held her options until the day before expiration, and the rate of return remained consistent, Ms. Farmer would have realized \$617,553 on future exercises (dating from April 26, 2009 to January 14, 2013) using an estimated federal tax rate of 35% plus Medicare tax of 1.45%.”<sup>3</sup> CP at 137.

Daniel filed his own declaration claiming Teresa’s proposed valuation was “inappropriate and unreasonable.” CP at 130. He did not, however, offer any competing analysis of the value of the stock options. Instead, Daniel renewed his motion for modification of the decree to allow him to establish a trust account that would provide periodic distributions to Teresa. The court denied Daniel’s motion

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<sup>3</sup> Teresa also submitted an affidavit of her own saying, “Had affiant been in a position to exercise the stock options, for instance, on the day before each group of stock options expired, affiant would have been able to realize approximately \$617,553.00 on future exercises.” CP at 146.

and granted Teresa's request for relief from the decree under CR 60(b) on the basis of fraud, surprise, and newly discovered evidence. The court assessed Teresa's damages according to the valuation of the stock options as set forth in the Nelson declaration.

Daniel moved for reconsideration. While he did not dispute the trial court's conclusion that his conduct constituted a fraudulent conversion of the stock options, he argued that the court made a legal error by basing the value of Teresa's losses on the projected price of the stock the day before each option expired several years in the future. Daniel cited for the first time *In re Marriage of Langham*, 153 Wn.2d 553, 106 P.3d 212 (2005), and *Brougham v. Swarva*, 34 Wn. App. 68, 661 P.2d 138 (1983), arguing that these cases require damages for the conversion of stock and other property of fluctuating value to be based on the highest value of the asset at the time of conversion or a reasonable time thereafter. Under Daniel's proposed measure of damages, Teresa's losses would have been approximately \$173,000. Daniel also argued that the court erred by failing to discount Teresa's losses to present value.

The court denied Daniel's motion for reconsideration and rejected his proposed valuation of the stock options, explaining that this measure of damages would fail to make Teresa whole and would reward Daniel's fraudulent conduct:

[T]he Court is a court of equity. And Mr. Farmer exercised the stock options in August fraudulently. He knew he didn't have the authority to do so. And he continued to hide his actions and lie to this Court and try to finesse Mrs. Farmer into agreeing that they should be sold so that he wouldn't have to disclose what he had done.

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The judgment represents her loss. . . . She had the ability to exercise these stock options at some point in the future—[n]ot just today—but at some point in the future. And the only information that I have is what the value of those would be in the future is the expert opinion that was provided to me.

Now, I thought very long and hard because of the cases that you provided to this Court. And . . . I keep coming up against the block of why if—if we provide that the damages will be on the date the . . . stock options were exercised, then we are rewarding Mr. Farmer’s wrongdoing. We are letting him have his way for something he knew was wrong, but he didn’t have the authority to do.

...  
It’s not a windfall. It’s the amount that she had the ability to exercise of her own free will. He took her own free will away from her.

Verbatim Report of Proceedings (VRP) (June 4, 2007) at 27-29. The court reaffirmed its original valuation of the stock options at \$617,553, but agreed with Daniel that this amount should be discounted to present value. *See id.* at 29.

Both Daniel and Teresa followed up by submitting expert declarations discussing the appropriate discount rate for determining present value. Teresa’s expert, Nelson, proposed a discount rate of six percent. Daniel’s expert, Steven J. Kessler, countered with a rate between 15 and 20 percent. In addition, Kessler for the first time offered a critique of Nelson’s original valuation of the stock options. Teresa moved to strike the portion of Kessler’s declaration disputing the original valuation. The court granted Teresa’s motion to strike, noting that “the time had passed” for challenging the valuation of the stock options and that the only remaining issue was the appropriate discount rate. VRP (Sept. 10, 2007) at 12-13; CP at 27-29. The court adopted a discount rate of six percent. On April 14, 2008, the court entered judgment for Teresa and awarded her \$487,325 “in lieu of receipt of the PACCAR stock options referred to in the decree of dissolution of marriage.”

CP at 5. Daniel appealed.

The Court of Appeals affirmed in an unpublished opinion. *In re Marriage of Farmer*, noted at 157 Wn. App. 1054, 2009 WL 3584260. Focusing on the trial court's broad equitable authority to divide assets within the context of dissolution proceedings, the Court of Appeals explained that the trial court's measure of damages properly "put Teresa in as good a position as she would have been if Daniel did not act in bad faith and complied with the terms of the decree and the CR 2A Agreement." *Id.* at \*9. The court distinguished *Langham* and *Brougham*, noting that "the trial court exercised its equitable authority to enforce the specific terms of the final decree and the CR 2A Agreement." *Id.* The court concluded that "[o]n this record . . . the [trial] court did not abuse its discretion in . . . awarding Teresa damages to compensate her for the loss of her right to exercise the stock options before the future expiration dates set forth in the decree." *Id.* Daniel petitioned this court for review, which we granted at 168 Wn.2d 1026, 230 P.3d 1060 (2010).

## ANALYSIS

### *Standard of Review*

The parties dispute the proper standard of review. Teresa contends that we should review the trial court's award for abuse of discretion because the relief was granted pursuant to the court's equitable jurisdiction over the parties' dissolution. Daniel argues that whether the trial court applied a proper measure of damages is a question of law we should review de novo.



In a sense both parties are correct. Dissolution proceedings invoke the court's equitable jurisdiction. *Langham*, 153 Wn.2d at 560. Sitting in equity, a trial court enjoys broad discretion to grant relief to parties in a dissolution based on what it considers to be "just and equitable." RCW 26.09.080. Here, the trial court reopened the decree of dissolution to make a redistribution of property following Daniel's fraudulent conversion of the stock options awarded to Teresa. The court's actions fall squarely within its equitable jurisdiction over the parties' dissolution. We therefore review for abuse of discretion the trial court's ultimate remedy. *See In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992) (citing *In re Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989)).

"A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons." *Noble v. Safe Harbor Family Pres. Trust*, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009). An error of law constitutes an untenable reason. *Id.*; *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993). And Daniel correctly points out that the measure of damages is a question of law. *Shoemake v. Ferrer*, 168 Wn.2d 193, 198, 225 P.3d 990 (2010) (quoting *Womack v. Von Rardon*, 133 Wn. App. 254, 263, 135 P.3d 542 (2006)). Thus, a trial court necessarily abuses its discretion if it awards damages based upon an improper method of measuring damages.

#### *Valuation Method*

At the time of dissolution, all property is brought before the court for a "just

and equitable” distribution. RCW 26.09.080. With its equitable authority invoked, the court retains jurisdiction over all issues related to the decree of dissolution to ensure justice is administered properly. *See Yount v. Indianola Beach Estates, Inc.*, 63 Wn.2d 519, 524-25, 387 P.2d 975 (1964). The court’s continuing equitable jurisdiction includes the ability to grant whatever relief the facts warrant. *Ronken v. Bd. of County Comm’rs*, 89 Wn.2d 304, 313, 572 P.2d 1 (1977) (quoting *Kreger v. Hall*, 70 Wn.2d 1002, 1008, 425 P.2d 638 (1967)).

*Langham* illustrates how this plays out in the case of converted community assets. There the court entered a decree of dissolution dividing several thousand stock options between the husband and wife. *Langham*, 153 Wn.2d at 556. Years later, the husband cashed in the wife’s share of the options on the mistaken belief they were his. *Id.* at 558. Immediately after the husband exercised the options, the stock plummeted, resulting in a substantial loss. *Id.* The wife moved to enforce the decree, seeking damages for the wrongful exercise of her share of the options. *Id.* at 558-59. In assessing damages against the husband, the court analogized to a conversion cause of action and measured damages based on the value of the stock at the time the options were exercised or converted. *Id.* at 558, 560. On review, we approved of the trial court’s use of a tort law conversion measure of damages as a framework for granting equitable relief to the aggrieved wife. *Id.* at 560. We held that, at a minimum, the wife was entitled to recover the value of the stock at the time her options were converted. *Id.* at 569. But we left open the issue of damages when a converted asset increases in value, saying we would address that question

“another day.” *Id.*

Daniel argues this is that other day, but he misconstrues the import of our *Langham* decision. The trial court here granted relief on a similar theory as the trial court in *Langham*: Using the framework of conversion and tort damages, the court sought to place Teresa in as good a position as she would have been had Daniel not fraudulently converted her share of the stock options. VRP (June 4, 2007) at 27-29. In this regard, the court found support in the well-established theory of tort damages that seeks to make the tort victim whole. *See, e.g., DeNike v. Mowery*, 69 Wn.2d 357, 358, 418 P.2d 1010, 422 P.2d 328 (1966) (“The purpose of awarding nonpunitive, pecuniary compensation to the injured party is to repair his injury, or to make him whole again as nearly as that may be done by an award of money.”). The trial court explained that nothing in *Langham* foreclosed providing such relief to Teresa, but rather *Langham* supported a measure of damages that would make Teresa whole. VRP (June 4, 2007) at 27.

Daniel argues that the trial court erred as a matter of law by measuring damages in light of the projected value of the stock options on the latest date they could be exercised. In Daniel’s view, there is only one answer to the question left open in *Langham*: Damages for conversion of stock options must be based on the highest value of the stock between the time the tort victim has notice of the conversion and a reasonable time thereafter, but under no circumstances can the reasonable time extend beyond the date of judgment. Teresa argues that the trial court’s method for measuring damages was permissible and that we should defer to

the court's choice of this particular method of valuing her loss.

We reject Daniel's proposal for a single, categorical rule for measuring the value of stock options when the stock price increases after conversion. In the first place, *Langham* itself does not suggest that such a rule exists. We noted in *Langham* that the parties had briefed "the issue of measuring damages in conversion actions when the property fluctuates [or increases] in value, as stock does." 153 Wn.2d at 569. But we decided to "leave that question for another day," as the stock in *Langham* declined rather than increased in value immediately after the options were converted. *Id.* Daniel's argument assumes that only one measure of damages can be correct when the asset increases in value. But we do not read *Langham* as foreshadowing the adoption of a single, categorical rule.

Moreover, the valuation of stock options does not lend itself to one universal approach. Determining the value of stock options is a complicated endeavor. *See, e.g., Everett v. Everett*, 195 Mich. App. 50, 53, 489 N.W.2d 111 (1992) ("Other jurisdictions have examined the issue regarding how to calculate the value of stock options, a formidable task given the numerous possible contingencies and restrictions involving stock options."). As a result, methods for valuing stock options and assets of fluctuating value vary widely, both in the context of dissolution actions and the context of tort actions.

In dissolution proceedings, courts have used three main approaches to valuing stock options: present value, retained jurisdiction, and deferred distribution. Tracy A. Thomas, *The New Marital Property of Employee Stock Options*, 35 Fam. L.Q.

497, 518-21 (2001). The present-value approach requires the court to measure the present value of a stock option and award the aggrieved party a lump-sum cash award at the time of dissolution. *Id.* at 519. Experts have developed a variety of models for calculating the stock options' present value under this approach. The most widely known model, the Black-Scholes formula, is "a complex method that reflects the interrelationship between market value and exercisability by taking into account eleven different variables." *Id.* at 518-19.<sup>4</sup> Two other models, the Shelton model and the Kassouf model, rely on "regression analysis of historical relationships among economic variables to estimate statistically the expected value of the option." *Id.* at 519 n.116.

Some courts are reluctant to wade into the economic morass of ascertaining a present value for stock options, and instead defer any valuation until the options are exercised at some point in the future. Under the retained-jurisdiction approach, for example, the court does not grant a lump-sum cash award at dissolution, but instead retains jurisdiction over the property distribution until the holder cashes in the options, at which point the court enforces an equitable distribution of the proceeds. *Id.* at 521. Similarly, under the deferred-distribution approach, the court allocates rights in the stock options at the time of dissolution but refrains from making any award until the holder exercises the options at a later date. *Id.* Because the spouse who is the employee typically retains the stock options, under both the deferred- and

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<sup>4</sup> The Black-Scholes model won the Nobel Prize for economics in 1997. Thomas, *supra*, at 519. However, it has received criticism for not providing an accurate value for employee stock options, as it is designed to value only publicly traded stock options. *Id.*

retained-jurisdiction approaches courts have developed a variety of methods for securing the nonemployee spouse's interests pending the exercise of the stock options. *Id.*

In the context of a tort action for conversion, the approaches to valuing and measuring damages are equally varied. *See generally* C.B. Higgins, Annotation, *Measure of Damages for Conversion of Corporate Stock or Certificate*, 31 A.L.R.3d 1286, cmt. n. (1970). Some courts measure damages by the highest value of the stock between the time of conversion and a reasonable time after the victim receives notice of the conversion. *Id.* § 5[c] at 1317. New York courts have developed a similar rule that measures damages using the highest value of the stock between the time the victim learns of the conversion and a reasonable time thereafter. *Id.* § 5[d] at 1322-23. The New York rule excludes the time between the act of conversion and the victim's notice of the conversion on the theory that, if the victim had wanted to sell the stock during that interval, he would have learned of the conversion. *In re Salmon Weed & Co.*, 53 F.2d 335, 341 (2d Cir. 1931). While the New York rule has garnered some acceptance, it is still only one of at least seven accepted measures of damages for the conversion of stock. Royce de R. Barondes, *An Alternative Paradigm for Valuing Breach of Registration Rights and Loss of Liquidity*, 39 U. Rich. L. Rev. 627, 636-39 (2005). The general acceptance of so many different approaches for valuing stock options and other assets of fluctuating value weighs against our adopting a single, universal approach for all cases. *Cf. Scully v. US WATS, Inc.*, 238 F.3d 497, 512 (3d Cir. 2001) (“[G]iven the

myriad factors that might arise in each case, we doubt that any single universal damage theory could properly value stock options in all situations.”).

One additional consideration cautions against adopting Daniel’s categorical rule for valuation. Daniel advocates for our adoption of the New York rule, which measures damages by the highest value of the stock between the time the victim has notice of the conversion and a reasonable time thereafter. The rationale behind the “reasonable time thereafter” is to grant the conversion victim an interval of time in which she could theoretically reenter the market to purchase the stock that was converted and thus be returned to her preconversion position. *Schultz v. Commodity Futures Trading Comm’n*, 716 F.2d 136, 140 (2d Cir. 1983). This rationale makes sense when dealing with assets that are readily replaceable on the market. But employment stock options, like those Daniel received from PACCAR, have no market and are irreplaceable. Thomas, *supra*, at 517 (explaining employment stock options “do[] not have an ascertainable market value because [they are] unassignable”); *Scully*, 238 F.3d at 508 (noting unlike other stock options, “employee stock options are not publicly traded”). Once converted, Teresa’s stock options were gone forever, and Teresa could not even in theory have reentered the market to replace them. Adoption of the New York rule in the context of employee stock options would therefore make little sense because the rule’s policy underpinnings are simply not present.<sup>5</sup>

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<sup>5</sup> Not surprisingly, the parties do not cite a single case that has adopted the New York rule or one of its variants in the context of employment stock options. Still, Daniel argues the New York rule should govern and, relying on *Roxas v. Marcos*, 89 Haw. 91, 969 P.2d 1209 (1998), he argues that the absolute end point for the “reasonable time

Upholding the trial court’s measure of damages in this case is consistent with the significant deference we accord trial courts in dissolution proceedings. In the context of valuing pensions, for example, we have developed a “lumpsum” approach and a “pay as it comes” approach, *In re Marriage of Wright*, 147 Wn.2d 184, 190, 52 P.3d 512 (2002), which mirror approaches some courts use for valuing stock options. We have deferred to the equitable discretion of trial courts to use one approach over the other and have recognized that “[f]lexibility [is] especially important in allocating the community interest in a retirement plan.” *Id.* at 196; *see also Wilder v. Wilder*, 85 Wn.2d 364, 369, 534 P.2d 1355 (1975) (“There can be no set rule for determining every [pension] case and as in all other cases of property distribution, the trial court must exercise a wise and sound discretion.”). We are likewise hesitant to second-guess a trial court’s equitable distribution of other assets that pose difficult valuation problems. *See, e.g., In re Marriage of Hall*, 103 Wn.2d 236, 242-43, 692 P.2d 175 (1984) (explaining that “several accounting or appraisal methods may be used” to value goodwill and that “selection of any one method for

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thereafter” is the date of judgment. We reject this arbitrary cutoff date for two reasons. First, *Roxas*’s adoption of an “absolute end-point” occurred at the tail end of its discussion of the New York rule—a rule that, as discussed above, has little relevance in the context of employee stock options that cannot be replaced on the open market. *Id.* at 150-52. Second, *Roxas* did not propose the date of judgment as a universal cut-off date for all cases. Instead, the *Roxas* court imposed the cut off at judgment because it was concerned that the trier of fact on remand in that case would not have any evidence on which to base its valuation beyond that date. *Id.* at 152 (“[A]pplying the New York rule to the present case, the date of close of the evidence at trial would, as a matter of law, be the absolute end-point beyond which the “reasonable time” cannot extend, inasmuch as the market values of the converted Buddha statue and gold bars beyond that date would be unknowable to the trier of fact.” (emphasis added)). Here, by contrast, the trial court had sufficient evidence in the record upon which to base its damages award.



all cases would unnecessarily limit the court in making a fair and just distribution”). A similar notion of deference is evident from our reluctance to revisit a trial court’s distribution of property when the court mischaracterizes assets as separate or community property but otherwise makes a just and equitable distribution. *See Worthington v. Worthington*, 73 Wn.2d 759, 768, 440 P.2d 478 (1968); *In re Marriage of Zier*, 136 Wn. App. 40, 46, 147 P.3d 624 (2006); *see also In re Marriage of Pilant*, 42 Wn. App. 173, 181, 709 P.2d 1241 (1985) (holding that erroneous valuation of pension was not reversible error where distribution was otherwise just and equitable).

The trial court granted to Teresa relief based on what it considered to be just and equitable under the circumstances of the case. Consistent with well-established tort law principles, the court sought to make Teresa whole by returning her to her preconversion position. The court did so by measuring Teresa’s losses by the present value of her converted stock options, using a lump-sum or present-value approach to valuation. Because there are several possible methods for valuing converted stock options, we cannot conclude that the trial court erred as a matter of law by employing a tort measure of damages. We decline Daniel’s invitation to adopt a single approach, particularly one that seems out of place in the context of employee stock options.<sup>6</sup>

As an alternative, Daniel argues that the court’s calculation of damages was unduly speculative. The trial court based its calculation of damages on the Nelson

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<sup>6</sup> For the same reason, we decline to follow the dissent in adopting the “reasonable time after” rule from *Brougham*, 34 Wn. App. at 77. Dissent at 3, 8.

declaration, which Teresa filed in support of her CR 60(b) motion. Daniel did not timely provide any expert testimony to contradict or otherwise challenge Nelson's calculation of damages.<sup>7</sup> Nor did Daniel provide any expert testimony regarding the calculation of damages when he filed his motion for reconsideration. It was not until the court called for further information on the correct present-value calculation that Daniel submitted an expert opinion challenging Nelson's calculations. The court properly struck that testimony as untimely.

Our reluctance to second-guess the trial court's equitable authority is even more pronounced when we are asked to dictate not only a method of valuation, but also the calculation of damages under that method. As the Court of Appeals correctly observed, the calculation of damages is a question of fact, *Farmer*, 2009 WL 3584260, at \*9 (citing *Womack*, 133 Wn. App. at 263), and Daniel has not established that the amount of damages awarded by the trial court is unsupported by the evidence. Rather, he merely reiterates the same argument he made to the trial court that the damages are speculative. We fail to see how the trial court speculated when it based its damages award on the evidence presented.<sup>8</sup>

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<sup>7</sup> At the hearing on Teresa's CR 60(b) motion, Daniel requested for the first time that the court set an evidentiary hearing for a later date so he could cross-examine Nelson. The court denied this request. The Court of Appeals affirmed the trial court's decision, holding that Daniel's request for an evidentiary hearing was untimely. *Farmer*, 2009 WL 3584260, at \*11 (citing *In re Marriage of Rideout*, 150 Wn.2d 337, 352, 77 P.3d 1174 (2003)). Daniel did not raise this issue in his petition for review or supplemental brief to this court, and we thus decline to address it.

<sup>8</sup> Although Daniel never made the argument before this court, the dissent suggests that the damages award was punitive. We agree with the dissent that "[a]n award intended to punish Daniel for the wrongful conversion would be improper." Dissent at 9 n.6. We agree with the trial court and the Court of Appeals that the award was based on the evidence and was not punitive.

Daniel's real concern, therefore, does not seem to focus on the court's supposed speculation, but rather on expert Nelson's allegedly speculative calculations. Unlike the dissent, we decline to critique Nelson's calculations on review. As noted above, experts have developed a variety of highly complex models for valuing stock options. This is an evolving science that is properly addressed through expert testimony. To the extent parties desire to scrutinize and critique different valuation models through dueling expert testimony, we think the trial court provides the appropriate forum. In this case, the trial court weighed the Nelson declaration against Daniel's own assertions and found that the Nelson declaration provided the more credible and accurate calculation. We hold that, on this record, the trial court properly exercised its discretion in calculating damages.<sup>9</sup>

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<sup>9</sup> In a footnote to his supplemental brief, Daniel reiterates an argument rejected by the Court of Appeals that the trial court should have used a discount rate of 20.325 percent instead of 6.0 percent. In a separate footnote, he argues that the Court of Appeals erred by striking his motion to supplement the record with new evidence related to PACCAR stock prices. Because Daniel did not raise either of these issues in his petition for review, we do not address them. RAP 13.7(b).

*Attorney Fees*

Teresa requested attorney fees at the Court of Appeals and renewed that request in her supplemental brief to this court. Under the terms of the parties CR 2A Agreement, “[t]he court may award attorney’s fees in the event the court concludes in its discretion that either party has by his or her actions frustrated the terms of this agreement and or has acted in bad faith.” CP at 458. Daniel has never challenged the trial court’s finding that he acted in bad faith by converting Teresa’s share of the community stock options. Because it was Daniel’s act of bad faith that precipitated the appeal and this court’s review, we grant Teresa’s request for reasonable attorney fees.

CONCLUSION

Trial courts have broad equitable authority to grant relief and fashion appropriate remedies in dissolution proceedings. Consistent with our tradition of deference to the exercise of a trial court’s equitable authority, we decline the invitation to adopt a one-size-fits-all approach to valuing converted stock options. The measure of damages used by the trial court below was one of several accepted approaches, and the amount of damages was properly based on the expert’s calculation of the present value of Teresa’s converted stock options. We affirm.

AUTHOR:

Justice Debra L. Stephens

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WE CONCUR:

Justice Mary E. Fairhurst

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Justice Charles W. Johnson

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Justice Gerry L. Alexander

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Justice Tom Chambers

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Justice Susan Owens

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