

319 P.3d 45
(Cite as: 319 P.3d 45)

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Court of Appeals of Washington,
Division 1.
IN THE MATTER of the MARRIAGE of Mary M.
WRIGHT, Respondent,
and
Kim B. Wright, Appellant.

No. 69133-3-I.
Dec. 16, 2013.
Publication Ordered Feb. 3, 2014.

Background: In proceedings on wife's petition for dissolution of marriage, the Superior Court, King County, William L. Dowling, J., entered decree of dissolution, distributing marital assets, awarding child custody and support, and establishing spousal maintenance. Husband appealed.

Holdings: The Court of Appeals, Verellen, J. held that:

- (1) distribution of marital property leaving immediate imbalance of \$3,369,196 in favor of wife was not abuse of discretion;
- (2) trial court did not abuse its discretion in awarding more tangible and liquid assets to wife than to husband;
- (3) trial court's award to wife of equalizing payment including husband's future earnings was within its discretion;
- (4) trial court did not abuse its discretion in calculating value of goodwill of husband's Alaska surgery practice;
- (5) evidence was sufficient to support determination that marital community was intact until date wife filed for dissolution; and
- (6) husband's unsupported and conclusory assertions were insufficient to establish that award of maintenance to wife was abuse of trial court's discretion.

Affirmed.

West Headnotes

[1] Divorce 134 ⚖️653

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)1 In General
134k653 k. Discretion of court in general. [Most Cited Cases](#)

Divorce 134 ⚖️726

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)3 Proportion or Share Given on Division
134k726 k. Factors and considerations in general. [Most Cited Cases](#)

Trial court in dissolution proceedings has broad discretion to make a just and equitable distribution of property based on statutory factors, including but not limited to: (1) the nature and extent of the community property; (2) the nature and extent of the separate property; (3) the duration of the marriage; and (4) the economic circumstances of each spouse at the time the division of property is to become effective. [West's RCWA 26.09.080](#).

[2] Divorce 134 ⚖️810

134 Divorce
134V Spousal Support, Allowances, and Disposition of Property
134V(D) Allocation of Property and Liabilities; Equitable Distribution
134V(D)5 Valuation, Division or Distribution of Particular Property or Interests
134k810 k. Community property in general. [Most Cited Cases](#)

Trial court in a divorce action may distribute

319 P.3d 45
 (Cite as: 319 P.3d 45)

all property, whether categorized as community or separate.

[3] Divorce 134 ↪1283(1)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(I) Appeal

134k1277 Discretion

134k1283 Disposition of Property

134k1283(1) k. In general. **Most**

Cited Cases

Appellate court will affirm the distribution of marital property in dissolution proceedings unless an appellant demonstrates that the trial court manifestly abused its discretion.

[4] Divorce 134 ↪1283(1)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(I) Appeal

134k1277 Discretion

134k1283 Disposition of Property

134k1283(1) k. In general. **Most**

Cited Cases

Trial court abuses its discretion in the distribution of marital property in a dissolution action if its decision is manifestly unreasonable, or based on untenable grounds or reasons.

[5] Divorce 134 ↪1290(1)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(I) Appeal

134k1286 Questions of Fact, Verdicts and Findings

134k1290 Disposition of Property

134k1290(1) k. In general. **Most**

Cited Cases

Trial court's factual findings in support of a distribution of marital property in a dissolution ac-

tion are accepted if supported by substantial evidence.

[6] Divorce 134 ↪728

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)3 Proportion or Share Given on Division

134k728 k. Equality. **Most Cited Cases**

Divorce 134 ↪740

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)3 Proportion or Share Given on Division

134k731 Particular Factors and Considerations

134k740 k. Length of marriage, living standard and lifestyle. **Most Cited Cases**

Trial court is not required to place the parties in precisely equal financial positions at the moment of dissolution of a marriage; rather, if 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.

[7] Divorce 134 ↪738

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)3 Proportion or Share Given on Division

134k731 Particular Factors and Considerations

319 P.3d 45
 (Cite as: 319 P.3d 45)

134k738 k. Income and earning capacity; employment. [Most Cited Cases](#)

Divorce 134 ↪740

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)3 Proportion or Share Given on Division

134k731 Particular Factors and Considerations

134k740 k. Length of marriage, living standard and lifestyle. [Most Cited Cases](#)

In order to place the parties to a long-term marriage in roughly equal financial positions for the rest of their lives, the court may account for each spouse's anticipated post-dissolution earnings in its property distribution by looking forward.

[8] Divorce 134 ↪738

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)3 Proportion or Share Given on Division

134k731 Particular Factors and Considerations

134k738 k. Income and earning capacity; employment. [Most Cited Cases](#)

Divorce 134 ↪740

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)3 Proportion or Share Given on Division

134k731 Particular Factors and Con-

siderations

134k740 k. Length of marriage, living standard and lifestyle. [Most Cited Cases](#)

Trial court's distribution of marital property in dissolution proceedings, leaving immediate imbalance of \$3,369,196 in favor of wife, was not an abuse of discretion, where marriage was long-term, permitting trial court to look forward in property distribution, and trial court determined that husband would earn at least \$10 million in two and a half years after dissolution, resulting in imbalance of nearly \$2.7 million in his favor.

[9] Divorce 134 ↪781

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)5 Valuation, Division or Distribution of Particular Property or Interests

134k781 k. Nature of property or interest in general. [Most Cited Cases](#)

Divorce 134 ↪786

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)5 Valuation, Division or Distribution of Particular Property or Interests

134k786 k. Vehicles, vessels, and other forms of transport. [Most Cited Cases](#)

Divorce 134 ↪794

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)5 Valuation, Division or Distribution of Particular Property or Interests

319 P.3d 45
 (Cite as: 319 P.3d 45)

[134k794](#) k. Businesses and associated assets in general. [Most Cited Cases](#)

Trial court did not abuse its discretion, in dividing marital property upon dissolution of long-term marriage, in awarding more tangible and liquid assets to wife than to husband, where property division accommodated husband's requests for certain specific high-value items with combined net value of \$7.75 million, including four airplanes, husband's surgical practice, and investment and real property acquired by husband after he moved to Alaska.

[10] Divorce 134 ↪826

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(D\)](#) Allocation of Property and Liabilities; Equitable Distribution

[134V\(D\)6](#) Methods of Distribution

[134k826](#) k. Credits, offsets and compensating payments. [Most Cited Cases](#)

Trial court's award to wife of equalizing payment including husband's future earnings was within its discretion, in proceedings for dissolution of marriage; character of property from which award was drawn was relevant factor, but was not controlling.

[11] Divorce 134 ↪875

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(D\)](#) Allocation of Property and Liabilities; Equitable Distribution

[134V\(D\)9](#) Proceedings for Division or Assignment

[134k875](#) k. Pleadings. [Most Cited Cases](#)

Trial court's duty to characterize a particular asset as community or separate property in a dissolution of marriage proceeding only arises where the issue is presented at trial. [West's RCWA 26.09.080](#).

[12] Divorce 134 ↪1263(2)

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(I\)](#) Appeal

[134k1259](#) Review

[134k1263](#) Parties Entitled to Allege Error

[134k1263\(2\)](#) k. Estoppel. [Most Cited Cases](#)

Husband waived claim that trial court erred in distributing separate property consisting of accounts receivable of his surgical practice for services provided after wife filed for dissolution, by failing to claim such assets as his separate property at trial, even when trial court directly asked his counsel to list his separate property.

[13] Divorce 134 ↪797

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(D\)](#) Allocation of Property and Liabilities; Equitable Distribution

[134V\(D\)5](#) Valuation, Division or Distribution of Particular Property or Interests

[134k797](#) k. Good will. [Most Cited Cases](#)

Under Alaska law, goodwill that cannot be marketed or sold is not considered in the property distribution at the dissolution of a marriage.

[14] Action 13 ↪17

13 Action

[13II](#) Nature and Form

[13k17](#) k. What law governs. [Most Cited Cases](#)

Where there is a conflict of laws, the court determines which state's law to apply by evaluating which jurisdiction has the most significant relationship to a given issue.

[15] Divorce 134 ↪505

319 P.3d 45
 (Cite as: 319 P.3d 45)

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(A) In General

134k502 What Law Governs

134k505 k. Property distribution. **Most Cited Cases**

In determining law to apply, trial court's findings of fact in dissolution proceedings concerning long-term nature of parties' marriage and parties' financial expectations strongly supported conclusion that Washington's contacts with issue of whether goodwill of husband's Alaska surgical practice, which goodwill could not be marketed or sold, was subject to distribution upon dissolution of marriage were more significant than Alaska's.

[16] Divorce 134 ⚡765

134 Divorce

134V Spousal Support, Allowances, and Disposition of Property

134V(D) Allocation of Property and Liabilities; Equitable Distribution

134V(D)4 Valuation of Property or Interest in General

134k762 Evidence in General

134k765 k. Weight and sufficiency. **Most Cited Cases**

Evidence 157 ⚡571(7)

157 Evidence

157XII Opinion Evidence

157XII(F) Effect of Opinion Evidence

157k569 Testimony of Experts

157k571 Nature of Subject

157k571(7) k. Value. **Most Cited Cases**

Evidence 157 ⚡574

157 Evidence

157XII Opinion Evidence

157XII(F) Effect of Opinion Evidence

157k574 k. Conflict with other evidence.

Most Cited Cases

Trial court did not abuse its discretion, in proceedings for dissolution of marriage, in calculating value of goodwill of husband's Alaska surgery practice in determining distribution of marital property, where trial court heard testimony from husband's and wife's experts, and accepted value placed on goodwill by husband's expert.

[17] Husband and Wife 205 ⚡272(4)

205 Husband and Wife

205VII Community Property

205k272 Dissolution of Community

205k272(4) k. Actions for dissolution or partition. **Most Cited Cases**

Evidence in dissolution proceedings was sufficient to support trial court's determination that marital community was intact until date wife filed for dissolution, for purposes of application of the separate and apart statute; evidence established that neither party intended for family to accompany husband when he moved out of state, that parties continued to travel together and socialize with friends together after that date, that neither party expressly renounced marriage after husband announced that he had a pregnant girlfriend out of state, and that parties discussed family's future as "family partnership" as recently as four months prior to wife's filing for divorce. *West's RCWA 26.16.140*.

[18] Husband and Wife 205 ⚡249(5)

205 Husband and Wife

205VII Community Property

205k249 Property Acquired During Marriage in General

205k249(5) k. Time when character determined; continuance of character. **Most Cited Cases**

Husband and Wife 205 ⚡272(1)

205 Husband and Wife

205VII Community Property

205k272 Dissolution of Community

[205k272\(1\)](#) k. Effect of abandonment, separation, or divorce. [Most Cited Cases](#)

In Washington, when married individuals live separate and apart from one another, their respective earnings and accumulations while apart are regarded as the separate property of each; however, the separate and apart statute provides that a married person's assets are separate property only when a community no longer exists. [West's RCWA 26.16.140](#).

[19] Husband and Wife 205 ↪272(1)

205 Husband and Wife

[205VII](#) Community Property

[205k272](#) Dissolution of Community

[205k272\(1\)](#) k. Effect of abandonment, separation, or divorce. [Most Cited Cases](#)

For purposes of application of the separate and apart statute, mere physical separation does not dissolve the marital community. [West's RCWA 26.16.140](#).

[20] Husband and Wife 205 ↪249(5)

205 Husband and Wife

[205VII](#) Community Property

[205k249](#) Property Acquired During Marriage in General

[205k249\(5\)](#) k. Time when character determined; continuance of character. [Most Cited Cases](#)

Husband and Wife 205 ↪272(1)

205 Husband and Wife

[205VII](#) Community Property

[205k272](#) Dissolution of Community

[205k272\(1\)](#) k. Effect of abandonment, separation, or divorce. [Most Cited Cases](#)

For purposes of application of the separate and apart statute, the determination of whether a husband and wife are living separate and apart turns on the peculiar facts of each case. [West's RCWA 26.16.140](#).

[21] Divorce 134 ↪843

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(D\)](#) Allocation of Property and Liabilities; Equitable Distribution

[134V\(D\)7](#) Debts and Liabilities in General

[134k834](#) Particular Debts and Liabilities

[134k843](#) k. Other particular and multiple debts. [Most Cited Cases](#)

Trial court did not abuse its discretion, in calculating property award upon dissolution of marriage, in declining to include in marital debts purely hypothetical liability faced by husband in pending medical malpractice action.

[22] Divorce 134 ↪598(1)

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(C\)](#) Spousal Support

[134k598](#) Award in General; Calculation

[134k598\(1\)](#) k. In general. [Most Cited Cases](#)

Divorce 134 ↪606

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(C\)](#) Spousal Support

[134k605](#) Extent of Time of Payments

[134k606](#) k. In general. [Most Cited Cases](#)

Only limitation on the amount and duration of maintenance in a dissolution proceeding is that the award must be just. [West's RCWA 26.09.090](#).

[23] Divorce 134 ↪573

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(C\)](#) Spousal Support

319 P.3d 45

(Cite as: 319 P.3d 45)

[134k567](#) Grounds and Defenses in Determining Existence and Amount of Obligation

[134k573](#) k. Standard of living and station in life. [Most Cited Cases](#)

Spousal maintenance is a flexible tool for equalizing the parties' standard of living for an appropriate period of time. [West's RCWA 26.09.090](#).

[24] Divorce [134](#) [1251](#)

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(I\)](#) Appeal

[134k1251](#) k. Briefs. [Most Cited Cases](#)

Husband's unsupported and conclusory assertion, in action for dissolution of marriage, that trial court gave undue weight to fact that wife supported husband for period of time while husband earned professional degree was insufficient to establish that award of spousal maintenance to wife was abuse of trial court's discretion, especially where ultimate property division left husband nearly \$2.7 million ahead of wife, taking maintenance award into consideration. [West's RCWA 26.09.090](#).

[25] Divorce [134](#) [1147](#)

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(H\)](#) Counsel Fees, Costs, and Expenses

[134k1142](#) Need and Ability to Pay

[134k1147](#) k. Effect of divorce recoveries. [Most Cited Cases](#)

Divorce [134](#) [1163](#)

134 Divorce

[134V](#) Spousal Support, Allowances, and Disposition of Property

[134V\(H\)](#) Counsel Fees, Costs, and Expenses

[134k1159](#) Stage or Condition of Cause

[134k1163](#) k. Appeal or review. [Most Cited Cases](#)

Husband was not entitled to award of attorney

fees on appeal, in action for dissolution of marriage, where husband was awarded substantial property in dissolution and was able to carry his own attorney fees on appeal. [West's RCWA 26.09.140](#).

*[47](#) Valerie a Villacin, [Catherine Wright Smith](#), [Smith Goodfriend PS](#), [Janet A. George](#), [Janet A. George](#) Inc P.S, Seattle, WA, for Appellant.

[Janet A. George](#), [Janet A. George](#) Inc P.S, Seattle, WA, [Thomas Gerard Hamerlinck](#), [Thomas G. Hamerlinck PS](#), Bellevue, WA, [Kenneth Wendell Masters](#), [Masters Law Group PLLC](#), [Shelby R. Frost Lemmel](#), [Masters Law Group PLLC](#), Bainbridge Island, WA, for Respondent.

VERELLEN, J.

¶ 1 Dr. Kim Wright appeals the property distribution and maintenance order in the dissolution of his 30-plus year marriage to Mary Wright. We conclude that (1) The property distribution was within the trial court's discretion; (2) ample evidence supports the trial court's determination of the date the Wrights separated; (3) the trial [*48](#) court correctly applied Washington law in valuing the surgical practice's goodwill, and soundly exercised its discretion in distributing the Wright's community interest in the practice; (4) Dr. Wright waived the issue of whether certain assets were his separate property; and (5) the award of spousal maintenance was an appropriate exercise of the trial court's discretion. We affirm the trial court's property distribution and provision of maintenance, and deny Dr. Wright's request for attorney fees on appeal.

FACTS

¶ 2 Ms. Wright petitioned for dissolution in April 2011. The issues before the trial court were child support, spousal maintenance, and the distribution of assets.^{FN1} The Wrights agreed to the terms of a parenting plan and the values of most assets.^{FN2} Following trial, the court entered a decree of dissolution and distributed the property.

FN1. The Wrights had eight children together, seven of whom were emancipated adults by the time of the May 2012 trial.

FN2. Dr. Wright does not appeal from the value the court assigned to the family home, the only asset value the parties did not stipulate to before trial.

¶ 3 The court awarded Ms. Wright \$8,526,834 in community property, a \$1.7 million equalizing payment, and \$1 million in spousal maintenance spread over three years. The court awarded Dr. Wright \$8,657,042 in community property and \$979,966 in separate property, less the \$1.7 million equalizing payment. The court determined that Dr. Wright would work for a minimum of 2.5 years after the dissolution, and earn a minimum of \$4 million annually.

¶ 4 Dr. Wright appeals.

ANALYSIS

[1][2][3][4][5] ¶ 5 A trial court in dissolution proceedings has broad discretion to make a just and equitable distribution of property based on the factors enumerated in RCW 26.09.080.^{FN3} The court may distribute all property, whether categorized as community or separate.^{FN4} This court will affirm unless an appellant demonstrates that the trial court manifestly abused its discretion.^{FN5} This occurs if the trial court's decision is manifestly unreasonable, or based on untenable grounds or reasons.^{FN6} A trial court's factual findings are accepted if supported by substantial evidence.^{FN7}

FN3. Under RCW 26.09.080, the trial court is to make a distribution of property that is just and equitable after consideration of all relevant factors, including but not limited to, (1) The nature and extent of the community property; (2) the nature and extent of the separate property; (3) the duration of the marriage; and (4) the economic circumstances of each spouse at the time the division of property is to become ef-

fective.

FN4. *In re Marriage of Konzen*, 103 Wash.2d 470, 477–78, 693 P.2d 97 (1985); *In re Marriage of Irwin*, 64 Wash.App. 38, 48, 822 P.2d 797 (1992).

FN5. *In re Marriage of Brewer*, 137 Wash.2d 756, 769, 976 P.2d 102 (1999) (trial court is in the best position to determine what is fair under the circumstances); *In re Marriage of Buchanan*, 150 Wash.App. 730, 735, 207 P.3d 478 (2009).

FN6. *In re Marriage of Littlefield*, 133 Wash.2d 39, 46–47, 940 P.2d 1362 (1997).

FN7. *In re Marriage of Thomas*, 63 Wash.App. 658, 660, 821 P.2d 1227 (1991). An appellate court should “not substitute [its] judgment for the trial court's, weigh the evidence, or adjudge witness credibility.” *In re Marriage of Greene*, 97 Wash.App. 708, 714, 986 P.2d 144 (1999).

Property Distribution: Roughly Equal Positions

¶ 6 Dr. Wright first contends that the trial court abused its discretion because its property distribution did not leave the parties in “roughly equal” positions. This is so, Dr. Wright argues, because Ms. Wright received more tangible and liquid assets, on the basis that Dr. Wright would earn at least \$10 million post-dissolution. Dr. Wright fails to demonstrate that the trial court abused its discretion.

[6][7] ¶ 7 A trial court is not required to place the parties in precisely equal financial positions at the moment of dissolution.^{FN8} Rather, if the spouses were in a long-term marriage of 25 years or more, the court's *49 objective is to place the parties in roughly equal financial positions for the rest of their lives.^{FN9} To reach this objective, the court may account for each spouse's anticipated postdissolution earnings in its property distribution

319 P.3d 45
(Cite as: 319 P.3d 45)

by looking forward. In *In re Marriage of Rockwell*, this court approved a property award that provided more amply for the wife, who was six years older than her husband and in ill health, where the court determined that the husband would make up the difference through at least seven years of anticipated postdissolution employment earnings.^{FN10}

FN8. *In re Marriage of White*, 105 Wash.App. 545, 549, 20 P.3d 481 (2001).

FN9. *In re Marriage of Rockwell*, 141 Wash.App. 235, 243, 170 P.3d 572 (2007).

FN10. 141 Wash.App. 235, 248–49, 170 P.3d 572 (2007).

[8] ¶ 8 *Rockwell* supports the trial court's property division in this case. Dr. Wright argues the court awarded property valued at \$8,657,042 to Dr. Wright and \$8,526,834 to Ms. Wright, then applied an equalizing payment and three years of spousal maintenance to Ms. Wright, leaving an immediate imbalance of \$3,369,196 in her favor. But, looking forward as is required in a long-term marriage, the trial court also determined that Dr. Wright would earn at least \$10 million in 2.5 years after dissolution. On this basis, Dr. Wright would ultimately end up with nearly \$2.7 million more than Ms. Wright in the long run. The trial court's determinations are amply supported by the evidence adduced at trial. Dr. Wright fails to demonstrate that the property division left him in an inferior position to Ms. Wright for the rest of their lives, much less that the trial court abused its discretion.

[9] ¶ 9 Dr. Wright's assertion that the property division was unfair because Ms. Wright received more of the “tangible” and “liquid” assets than he did is not persuasive. Dr. Wright expressly requested certain high-value items with a combined net value of \$7.75 million, including four airplanes, the surgical practice, and investment and real property acquired after he moved to Alaska. The trial court's property division accommodated his requests. It was entirely reasonable for the trial court to award

Ms. Wright the assets it did in order to make the division just and equitable. Dr. Wright fails to persuasively demonstrate that this was an abuse of discretion.

Separate Property

[10] ¶ 10 Dr. Wright contends that the trial court improperly invaded his separate property in awarding the \$1.7 million equalizing payment because the award necessarily included his future earnings. To support this contention, he cites to *Marriage of Holm*, a case decided under Remington's Revised Statutes § 989.^{FN11} This court rejected the nearly identical argument in a recent published opinion, *In re Marriage of Larson and Calhoun*,^{FN12} relying in part on our Supreme Court having rejected the *Holm* approach in *Konzen v. Konzen*.^{FN13} The *Konzen* court made clear that “[t]he character of the property is a relevant factor which must be considered, but is not controlling.”^{FN14} As the *Larson* court correctly observed, *Konzen* controls as to this issue.^{FN15} As in *Larson*, the trial court's decision here was within the range of acceptable choices, given the facts and the applicable legal standard.

FN11. 27 Wash.2d 456, 465, 178 P.2d 725 (1947).

FN12. 178 Wash.App. 133, 313 P.3d 1228 (2013).

FN13. 103 Wash.2d 470, 693 P.2d 97 (1985).

FN14. *Id.* at 478, 693 P.2d 97.

FN15. *Larson*, 178 Wash.App. at —, 313 P.3d 1228.

[11][12] ¶ 11 Dr. Wright also asserts that the trial court erred in distributing separate property consisting of the practice's accounts receivable for services provided after Ms. Wright filed for dissolution. However, Dr. Wright failed to claim these assets as his separate property at trial, even when the trial court directly asked Dr. Wright's counsel to list

319 P.3d 45
 (Cite as: 319 P.3d 45)

his separate property. The trial court's duty to characterize a particular asset as community or separate property only arises where the issue is presented at trial.^{FN16} *50 Dr. Wright waived the issue as to these assets.^{FN17}

FN16. RCW 26.09.080; 20 KENNETH W. WEBER, WASHINGTON PRACTICE, FAMILY AND COMMUNITY PROPERTY LAW, § 32.9, at 175 (1997).

FN17. See RAP 2.5(a) (“The appellate court may refuse to review any claim of error which was not raised in the trial court.”); see also *In re Marriage of Griswold*, 112 Wash.App. 333, 349 n. 7, 48 P.3d 1018 (2002).

Distribution of Alaska Surgical Practice

[13] ¶ 12 Dr. Wright argues that the trial court erred in distributing the goodwill of his Alaska surgical practice. He contends that the practice had no value because it was not “saleable” under Alaska law. Under Alaska law, goodwill that cannot be marketed or sold is not considered in the property distribution at the dissolution of a marriage.^{FN18}

FN18. *Moffitt v. Moffitt*, 749 P.2d 343, 347 (Alaska 1988) (“If the trial court determines either that no good will exists or that the good will is unmarketable, then no value for good will should be considered in dividing the marital assets.”); see also *Miles v. Miles*, 816 P.2d 129, 131 (Alaska 1991); *Fortson v. Fortson*, 131 P.3d 451, 460 (Alaska 2006) (wife's dermatology “clinic's unmarketability made it unnecessary to determine the value of the clinic's goodwill”).

[14] ¶ 13 Where there is a conflict of laws, the court determines which state's law to apply by evaluating which jurisdiction has the “most significant relationship” to a given issue.^{FN19} This is determined under the principles stated in *Restatement (Second) Conflicts of Law* § 6 (1971),^{FN20} which

include:

FN19. *Seizer v. Sessions*, 132 Wash.2d 642, 650, 940 P.2d 261 (1997).

FN20. In *Seizer*, our Supreme Court adopted *Restatement (Second) Conflicts of Law* § 258 (1971), which explains that the most significant relationship is determined under the principles stated in § 6. Section 258 further clarifies the relative weight given to these factors: “In the absence of an effective choice of law by the spouses, greater weight will usually be given to the state where the spouses were domiciled at the time the [property] was acquired than to any other contact in determining the state of the applicable law.” Comment a to § 258 states that “[t]he rule applies to chattels, to rights embodied in a document and to rights that are not embodied in a document.” In *In re Marriage of Landry*, 103 Wash.2d 807, 810, 699 P.2d 214 (1985), this rule was applied to a spouse's military pension. Dr. Wright does not dispute the applicability of *Restatement (Second) Conflicts of Law* § 258 to the goodwill of his Alaska business, but challenges the trial court's analysis of those factors.

- (a) the needs of the interstate and international systems,
- (b) the relevant policies of the forum,
- (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
- (d) the protection of justified expectations,
- (e) the basic policies underlying the particular field of law,
- (f) certainty, predictability and uniformity of result, and

319 P.3d 45
 (Cite as: 319 P.3d 45)

(g) ease in the determination and application of the law to be applied.

[15] ¶ 14 Here, the trial court considered those factors and determined that Washington law should apply. The trial court explained that “Washington's policy interests in consistency and in protecting the financial expectations of these parties are substantial and outweigh the speculative interest of Alaska in not restricting [Dr. Wright's] economic liberty ... in these unusual circumstances.” ^{FN21} The trial court's findings of fact concerning the long-term nature of the marriage and the parties' financial expectations strongly support the conclusion that Washington's contacts were more significant than Alaska's.

^{FN21}. Clerk's Papers at 253.

[16] ¶ 15 Dr. Wright fails to persuasively demonstrate that the trial court abused its discretion in considering the surgery practice's goodwill as an asset in calculating Dr. Wright's award. The trial court's determination of the goodwill value was supported at trial by the testimony of financial experts. Ms. Wright's expert, certified public accountant Kevin Grambush, testified that Dr. Wright's **neurosurgery** practice was worth \$8.4 million and, of that, “[t]he tangible assets are \$1,105,042, and the goodwill value is \$7,294,958.” ^{FN22} Dr. Wright's expert, certified public accountant Neil Beaton, testified that the goodwill value was \$366,000. The trial *51 court ultimately accepted Beaton's goodwill value of \$366,000, and awarded Ms. Wright a \$219,600 share. Because this award was based directly on evidence provided by Dr. Wright's own expert, there was no abuse of discretion in the trial court's determination that this number was correct.

^{FN22}. Report of Proceedings (RP) (May 29, 2012) at 71. Grambush also addressed and criticized the approach undertaken by Dr. Wright's expert's valuation of the practice.

¶ 16 Dr. Wright argues that Ms. Wright had no financial expectation that the goodwill would be treated as an asset because she should have assumed that Alaska law would apply. But it was entirely reasonable for the trial court to conclude that Ms. Wright had a legitimate expectation to receive her community property share of the goodwill based on a correct application of Washington law and on the trial court's factual findings supported by the evidence.

¶ 17 Dr. Wright also contends the trial court erred by concluding that the marriage was irretrievably broken in April 2011, when Ms. Wright filed for divorce. He argues that his business investments, comprised of money he earned before that date but while the couple were living separate and apart, are his separate property. Neither argument is persuasive.

[17] ¶ 18 The trial court's finding that the marital community was intact until April 2011 is supported by sufficient evidence. The record demonstrates that (1) Dr. Wright moved to Alaska in November 2007, when the parties' youngest children were still in middle school or high school, and it “really was never the plan” for the family to move with him; ^{FN23} (2) Dr. Wright regularly travelled between the family home and Alaska, and the parties travelled together regularly and continued to socialize with friends together; (3) even after Dr. Wright announced in October 2010 that he had a pregnant girlfriend in Alaska, neither party expressly renounced the marriage; (4) in January 2011, the parties discussed the family's future as a family partnership, not a divorce; and (5) Ms. Wright, a Roman Catholic, was not eager to divorce, and filed for divorce only after concluding the marriage was irretrievably broken in April 2011.

^{FN23}. RP (May 31, 2012) at 590.

[18][19][20] ¶ 19 In Washington, when married individuals live separate and apart from one another, their respective earnings and accumulations

while apart are regarded as “the separate property of each.”^{FN24} However, the separate and apart statute provides that a married person's assets are separate property only when a “community” no longer exists. Mere physical separation does not dissolve the community.^{FN25} The determination of whether a husband and wife are living separate and apart “turns on the peculiar facts of each case.”^{FN26} The evidence supports the trial court's finding that the marital community was intact until April 2011. This finding, in turn, supports the trial court's determination that Ms. Wright was entitled to her community property share of these assets. Accordingly, Dr. Wright fails to demonstrate that the trial court erred in dividing these assets as community property.^{FN27}

FN24. RCW 26.16.140.

FN25. *Kerr v. Cochran*, 65 Wash.2d 211, 224, 396 P.2d 642 (1964).

FN26. *Nuss v. Nuss*, 65 Wash.App. 334, 344, 828 P.2d 627 (1992).

FN27. See *Seizer*, 132 Wash.2d at 654, 940 P.2d 261 (“If the [separate and apart] statute does not apply because the marriage is not defunct, [the wife] would then be entitled to her community property share of the [asset].”).

[21] ¶ 20 Dr. Wright also argues that the trial court erred in making him solely responsible for liability from a pending medical malpractice action, citing *Dizard & Getty v. Damson*.^{FN28} But Dr. Wright does not identify*52 any portion of the record that demonstrates any existing or pending liability from such a suit. The trial court was not required to make provision for a hypothetical future lawsuit in its property award. Because the trial court's findings regarding the values of assets and liabilities were amply supported by evidence at trial, Dr. Wright fails to demonstrate any abuse of discretion in its assessment of this purely hypothetical liability.

FN28. 63 Wash.2d 526, 387 P.2d 964 (1964). In *Dizard*, the husband was responsible for the community business while the dissolution was pending. The community accumulated debts for which creditors sought payment after the marriage was dissolved. The wife sought to avoid liability, claiming that the marriage was defunct when the liabilities accrued. The Supreme Court held that “it is inconceivable that respondent may authorize the husband to carry on the community business, create a potential source of assets, ultimately share in these assets, and yet be immune from the claims of creditors who contribute to the accumulations, if any.” *Dizard*, 63 Wash.2d at 530, 387 P.2d 964.

¶ 21 The trial court's distribution of these assets was reasonable, supported both by correct conclusions of applicable law and findings of fact supported by the evidentiary record.

Maintenance

¶ 22 Dr. Wright contends that the trial court abused its discretion by awarding maintenance because Ms. Wright did not demonstrate financial need in light of the other provisions included in her award. Because financial need is not a prerequisite to a maintenance award, Dr. Wright's argument is unpersuasive.

[22][23] ¶ 23 The only limitation on the amount and duration of maintenance under RCW 26.09.090 is that the award must be “just.”^{FN29} Maintenance is “a flexible tool” for equalizing the parties' standard of living for an “appropriate period of time.”^{FN30}

FN29. *In re Marriage of Bulicek*, 59 Wash.App. 630, 633, 800 P.2d 394 (1990).

FN30. *In re Marriage of Washburn*, 101 Wash.2d 168, 179, 677 P.2d 152 (1984).

¶ 24 Citing *In re Marriage of Rink*,^{FN31} Dr.

319 P.3d 45
(Cite as: 319 P.3d 45)

Wright argues that in high-asset cases, neither spouse has financial “need” and thus, an award of both maintenance and a disproportionate property division is not appropriate. Dr. Wright’s reliance on *Rink* is misplaced because *Rink* is distinguishable from the facts here. In *Rink*, both parties had several working years ahead of them after their 24-year marriage ended. Here, by contrast, the trial court determined Ms. Wright would not work and Dr. Wright would retire in 2.5 years at the soonest. *Rink* does not support Dr. Wright’s argument that Ms. Wright is required to work before an award of maintenance is appropriate. *Rink* supports the conclusion that the trial court has discretion to award both an unequal property division and maintenance in favor of the same spouse. The *Rink* court affirmed an award to the wife of two-thirds of the marital estate and maintenance.^{FN32}

FN31. 18 Wash.App. 549, 571 P.2d 210 (1977).

FN32. *Id.* at 551, 571 P.2d 210.

[24] ¶ 25 Dr. Wright argues that in ordering maintenance, the trial court gave too much weight to the fact that Ms. Wright supported him for a time while he earned his degree. His argument, premised upon the analysis in *Washburn*, is not persuasive. The *Washburn* court held that when a marriage endures for some time after one spouse obtains a professional degree while supported by the other spouse, an award of maintenance may be inappropriate because “the supporting spouse may already have benefited financially from the student spouse’s increased earning capacity.”^{FN33} Dr. Wright fails to demonstrate that the *Washburn* analysis applies here, given that the ultimate property division will leave him ahead by nearly \$2.7 million, even considering the maintenance award. He also fails to provide any details allowing any insight into how the trial court analyzed the extent of Ms. Wright’s support while Dr. Wright earned his degree.

FN33. *Washburn*, 101 Wash.2d at 181, 677 P.2d 152.

¶ 26 Dr. Wright does not demonstrate that the maintenance award was an abuse of the trial court’s discretion.

Attorney Fees

[25] ¶ 27 Dr. Wright seeks attorney fees and costs under RCW 26.09.140. This court may award attorney fees after considering the relative resources of the parties and the merits of the appeal.^{FN34} Here, Dr. Wright was awarded substantial property in the dissolution,*53 and is able to carry his own attorney fees on appeal. We deny his motion.

FN34. RCW 26.09.140; *Leslie v. Verhey*, 90 Wash.App. 796, 807, 954 P.2d 330 (1998).

¶ 28 Affirmed.

WE CONCUR: LINDA LAU, and SCHINDLER, JJ.

Wash.App. Div. 1,2013.
In re Marriage of Wright
319 P.3d 45

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