Supreme Court No. 98263-5

COA No. 360407-III

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SUPREME COURT OF THE STATE OF WASHINGTON

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In re Marriage of

EDWARD A. MILLER,

Respondent,

and

RITA L. YTURRI-SMITH,

Petitioner.

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# RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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## I. INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal arises out of the dissolution of the six-year marriage, ten-year committed intimate relationship, of Rita Yturri-Smith (Smith) and Edward Miller (Miller). The court conducted a nine-day bench trial. It admitted 150 exhibits and heard testimony from seven witnesses, including three experts who testified to the facts surrounding corporate transactions, the tracing of assets and the valuation of real property. It was a difficult case, and to resolve the complex factual issues, the court had to evaluate the witnesses' credibility and reconcile substantial contradictory testimony. CP 508 (Memorandum Decision ll. 1-17 (MD)). It made findings regarding the characterization of assets, and ultimately "relied on RCW 26.09.080 to reach a just and equitable decision." CP 508 (MD l. 18)[1].

The court awarded Smith a disproportionate amount of community property of $718,761.49 and separate assets of $787,284.45, for a total estate of $1,506,045.94. CP 636-38, FDO ¶ 20A & B. It awarded Miller community assets of $630,992.49 and separate assets of $1,992,875.70 for a total estate of $2,623,868.19. CP 638-39, FDO ¶ 20C. The court found Miller incurred no post-separation debt and Smith incurred post-separation debt of $237,695.56. CP 639-40, FDO ¶ 20D & E. It awarded no fees, noting both parties received over $1.5 million in assets, and Smith's debt was incurred in part due to her decision not to work. CP 620-21, FOF ¶ 14.

[1] This Answer cites to the trial court's Memorandum Decision as "MD," which is found at CP 505-25; to the Final Divorce Order as "FDO," which is found at CP 634-41; and to the Findings and Conclusions about a Marriage as "FOF," which are found at CP 618-33.

Smith appealed. In a unanimous 44-page opinion, the appellate court affirmed all but one of the trial court's rulings (the latter ruling has not been appealed). The Court of Appeals held that the trial court's findings were supported by substantial evidence and that its legal rulings were consistent with Washington law. *See In re the Matter of the Marriage of Miller*, 2020 WL 589544. Smith seeks review, claiming three rulings of the appellate court are inconsistent with this Court's precedent, and requesting fees. The issues in Smith's Petition rest on disputed facts resolved by the trial court, and substantial evidence supported the court's findings and conclusions. The appellate rulings upholding the trial court's findings and conclusions are consistent with this Court's precedent. This Court should deny review.

## II. STATEMENT OF THE CASE

The couple began a committed relationship in December of 2003. CP 623, FOF ¶ 22 B.15. In 2007, Miller (age 53) and Smith (43) married. CP 622, FOF ¶ 22 A.24. Both had recently divorced. Miller had substantial assets, which included his ownership interest in Miller.WhiteRunkle (MWR), an advertising firm. Smith brought a retirement account and shared ownership of two encumbered real properties. Smith also carried debt, some of which Miller paid. CP 24, Decl. of Miller.

Smith attended Gonzaga Preparatory School and went on to earn a Bachelor of Arts degree from Eastern Washington State University. CP 621, FOF ¶ 22 A.5. She worked in sales, earning up to $80,000/year. CP 622, FOF ¶ 22 A.14. Smith quit working in 2007. CP 13-14, Decl. of Smith.

Miller attended John Rogers High School in Spokane and Spokane Falls Community College, where he obtained an Associate of Arts degree. CP 621, FOF ¶ 22 A.3. In 1985, Miller started working as a salesman for a local advertising firm. CP 621, FOF 22 ¶ A.6. Miller was adept at securing clients. CP 622, FOF ¶ 22 A.12 & 13. In 1993, for his contributions, the firm's founders, White and Runkle, gave Miller 458 shares (5%) of the company. CP 621, FOF ¶ 22 A.9-.10; Ex. P-21 at 402, Share Transfer Agreement (1993 STA) (Foltz: RP 57 ll. 21-24.).[2]

In 2005, White and Runkle wanted to be bought out. The corporation used retained earnings to purchase and then cancel their shares. CP 623-24, FOF ¶ 22 C.5 - C.10. Miller did not pay anything to White and Runkle in the redemption. Foltz: RP 62 ll. 5-25; RP 69 ll. 13-18. Before the stock redemption, Miller owned 458 shares; after the redemption, Miller owned the same 458 shares. Foltz: RP 61 l. 21- RP 62 l. 4; RP 63 ll. 6-14. Two months after the redemption, with the corporate retained earnings diminished, Miller loaned MWR $375,000. Foltz: RP 73 l. 24 - RP 74 l. 8.

In 2007, Miller decided to retire. RP 889 ll. 5-8. Miller converted the 2005 $375,000 loan to $359,850 in paid-in capital in November, 2007, and in December of that year, sold his 458 shares of MWR stock to Ascentium Corporation for $2,225,000. CP 624-25, FOF ¶ 22 D.2, D.10.

[2] Zoe Foltz was the company's CPA from 1988 to 2007. Foltz: RP 47 ll. 10-16. Foltz was also the CPA for individual tax work for Jack White and Robert Runkle after 1998, and for Miller from 1998 to 2007. Foltz: RP 47 l. 10 - RP 48 l. 2; RP 48 ll. 5-13.

After Miller sold MWR in 2007, Miller and Smith lived on the proceeds of the sale. Smith: RP 1813-15; Miller: RP 1016-27. Miller was also generous with Smith's family, paying her daughter's college tuition and providing her with a car, and providing support to Smith's mother. Smith: RP 1698-99, 1855-57, 1988-89. CP 629, FOF ¶ 22 H.7. The couple separated on November 7, 2013. CP 619, FOF ¶ 5.

*Facts relevant to the trial court's finding that the 2007 sale to Ascentium was a sale of stock, rather than payment for a noncompete agreement.*

The 2007 MWR corporate balance sheet listed its total assets at over $1.4 million, including trade notes and accounts receivable of $917,810. Ex. P-17 at 384 § 2(b). MWR generated $7,242,654 in gross revenues in the period ending November 30, 2006 (Ex. P-15 at 322 l. 1c), and $6,206,694 for the period ending November 30, 2007. Ex. P-16 at 355 l. 1c.

The trial court looked to the contract to glean the parties' intent. CP 624 FOF ¶ 22 D.7. The agreement was entitled "Stock Purchase Agreement" (SPA), and recited that Miller was the sole shareholder and that he intended to sell, and Ascentium intended to buy, his shares, for $2,225,000. Ex. R 361 at 947 & 952 (first ten pages attached as Appendix A). The court noted Miller and Smith's joint tax returns from 2007-2010 recorded the sale as a "sale of stock or asset sale." CP 624, FOF ¶ 22 D.8. These returns identify the shares sold in 2007 as stock acquired in 1993. Ex. P-4 at 43 ll. 1-2a; P-5 at 88 ll. 1-2a; P-6 at 125 ll. 1-2a. The court also relied on CPA Zoe Foltz, who offered expert testimony regarding the 2007 sale. CP 624, FOF ¶ 22 D.8. Upon the sale of his interest in MWR, Miller did not

intend to continue working because his plan was to retire. Miller: RP 889 ll. 5-8. The 2007 SPA also contained a three-year noncompete clause, which Ascentium stated was "necessary to protect the goodwill, trade secrets, confidential or proprietary information" it sought in the transaction. R-361 at 970-71 § 5.5(a). The court found the 2007 sale to Ascentium was a sale of stock and not payment for future wages. CP 624-25, FOF ¶ 22 D.9.

*Facts relevant to support the trial court's finding that the proceeds of the 2007 sale to Acentium were Miller's separate property.*

In 1993, Miller received his 458 shares of the company, representing 5% of the total shares. CP 621, FOF ¶ 22 A.9-10. Miller had secured a major client, Cellular One, which led to his receipt of the stock. Miller: RP 829 l.11 – RP 831 l. 11. On October 1, 2005 the corporation redeemed the shares of White and Runkle. Foltz: RP 61 l. 18 – RP 62 l. 7. The redemption was paid out of the corporation's retained earnings. Foltz: RP 118 l. 25 – RP 119 l. 22. Miller paid nothing for the redemption, and no bonus owed to Miller was used to pay the redemption. Foltz: RP 62 ll. 5-25; RP 69 ll. 13-18; RP 72 ll. 6-17; RP 74 l. 9 – RP 75 l. 13. Before and after the stock redemption, Miller owned the same 458 shares. Foltz: RP 61 l. 21 – RP 62 l. 4; RP 63 ll. 6-14; Ex. P-24 at 447 n.4. On November 30, 2005, Miller loaned the corporation $375,000. Foltz: RP 73 l. 24 - RP 74 l. 8. This loan represented an unpaid wage bonus owed to Miller. Foltz: RP 132 l. 18 - RP 133 l. 6. The loan was carried forward on the corporate balance sheet and noted in the corporate tax return. Foltz: RP 74 ll. 15-17; Ex. P-15 at 325, l. 19. The loan was converted to $359,850 in paid in capital on November 30, 2007. Foltz:

RP 75 ll. 14-19; RP 77 ll. 5-11. Converting the loan to paid in capital gave Miller a higher cost basis in his stock for tax purposes. Foltz: RP 77 ll.5-19. This did not increase Miller's stock ownership; Miller owned the same amount of shares before and after the conversion. Foltz: RP 134 ll. 17-23. The conversion was not applied to the acquisition or redemption of any new stock. Foltz: RP 77 l. 25 – RP 78 l. 6; RP 132 ll. 4-9.

Miller sold MWR to Ascentium in 2007 for $2,225,000. CP 624-25, FOF ¶ D.2, D.10. The SPA stated that Ascentium was purchasing Miller's 458 shares of MWR. Ex. R-361 at 952, Art. I §§ 1.1, 1.2; at 957, § 3.3(b). MWR tax returns reported $7,242,654 in gross revenues in the period ending November 30, 2006 (Ex. P-15 at 322 l. 1c), and $6,206,694 for the period ending November 30, 2007. Ex. P-16 at 355 l. 1c. 80% of MWR's gross volume was generated by Cellular One/AT&T, the account Miller brought to MWR in 1993. Miller: RP 842 l. 3 – RP 843 l. 18; RP 845 ll. 14-17. Miller and Smith's 2007, 2008, 2009, and 2010 tax returns reported the MWR stock sold to Ascentium was acquired in 1993. Ex. P-4 at 43 ll. 1-2a; P-5 at 88 ll. 1-2a; R-325 at 594 ll. 1-2a; R-326 at 625 ll. 1-2a.

The court found that Miller's stock was acquired in 1993, in 2007 Miller was the only shareholder of the 1993 stock, the stock was Miller's separate property, and the proceeds from the sale of Miller's 1993 stock to Ascentium in 2007 were Miller's separate property. CP 624-25, FOF ¶ 22 C.11, C.13, C.14, D.15. The court found that Smith did not show that the stock was transmuted to community property. CP 624, FOF ¶ 22 C.15.

*Facts relevant to the court's findings awarding the insurance proceeds to Miller and Smith based on their proportionate share of the insured assets.*

Smith brought to the marriage a partial ownership interest in the "Glennaire" home. CP 627, FOF ¶ 22 F.1. Smith shared this interest with her first husband, Steven Smith, and the home was also encumbered by a mortgage. CP 627, FOF ¶ 22 F.10. Miller purchased Steven's interest in Glennaire and also paid off the encumbrances on that property. CP 627, FOF 22 ¶ F.10. This transaction resulted in Glennaire being owned as the separate property of Miller at 77.15%, with Smith retaining her pre-existing proportionate ownership of 22.85%. CP 627, FOF ¶ 22 F.10- F.11.

In 2015, Glennaire was damaged in a fire. A Safeco Insurance homeowners' policy, listing Miller and Smith as the named insureds, insured the residence and its contents. CP 628, FOF 22 ¶ G.3-G.4. Since the parties' separation in 2013, Miller had paid the Safeco premiums and most other household expenses. CP 13, Decl. of Smith; CP 25, Decl. of Miller. In August of 2014, the trial court issued a temporary order effectively formalizing this arrangement, directing Miller to pay the insurance premiums, as well as the other expenses and $3400/month maintenance. CP 45-48. In the temporary order, the court stated that with respect to Miller's payment of the parties' household expenses, including the insurance premiums, the "pro rata share attributable to the wife shall be designated as maintenance." CP 47. After the fire, Safeco paid $7,765.13 to repair damage to the structure of the home. CP 628, FOF ¶ 22 G.10. Safeco also paid $355,131 for losses to the home's contents. CP 628, FOF ¶ 22 G.7. The

court awarded the insurance proceeds to Miller and Smith based on their proportionate ownership in the property. CP 629, FOF 22 ¶ G.13 & G.15.

## III. COUNTERSTATEMENT OF ISSUES

1. Did the trial court err when it found that the 2007 sale of MWR stock to Ascentium was a sale of stock and not the sale of Miller's future earning capacity?

2. Did the trial court err when it found that the wage bonus that was later converted to paid in capital did not constitute a new acquisition of stock?

3. Did the trial court err when it awarded the insurance proceeds paid for the Glennaire fire to Miller and Smith based on their proportionate ownership in the underlying assets?

4. Should Smith receive fees on appeal under RAP 18.1?

## IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Smith cites three rulings by Division III that she maintains are in "direct conflict" with this Court's precedent, warranting review under RAP 13.4(b)(1).[3] Pet. at 7. However, none of these issues involve legal rulings in conflict with this Court's precedent. Review is unwarranted.

### A. Standard Of Review And Applicable Law.

The character of property is established at the time of acquisition. *See Schwarz v. Schwarz*, 192 Wn. App. 180, 189, 368 P.3d 173 (2016). Property acquired before marriage is separate property. *See In re Marriage of Skarbek,* 100 Wn. App. 444, 447, 997 P.2d 447 (2000) (citing RCW 26.16.010). Once the separate character of property is established, there is a presumption that it remains separate property, and a spouse asserting that

[3] Smith also seeks fees. *See* Pet. at 2. She does not argue, however, that the lower courts' rulings regarding fees provide an independent basis for review. *See* Pet. at 2, 19-20.

separate property has been transmuted has the burden of proving the transfer by clear and convincing evidence. *See In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009).

While the ultimate characterization of property is a question of law, legal characterization of property as community or separate by the trial court generally presents a mixed question of law and fact. *See Schwarz*, 192 Wn. App. at 191-92. Whether a party is able to overcome a rebuttable presumption of community or separate character is a question of fact. *See id.* at 192. An appellate court will review the findings of fact supporting a trial court's characterization for substantial evidence. *See id*.

### B. The 2007 Sale Of Miller.WhiteRunkle To Ascentium Corporation Was A Stock Sale And Not A Sale Of Marital Earning Power.

Smith first argues that the Court of Appeals' decision conflicts with this Court's precedent "holding that a party's labor is community property, as are the party's earnings from labor." Pet. at 8. Her argument challenges the appellate court's ruling upholding the trial court's finding that the 2007 sale of MWR was a sale of stock and not a sale of Miller's future earnings. She claims: "Division III holds that a spouse's entry into a non-compete agreement during marital years does not render the funds received for that non-compete agreement community property." Pet. at 7-8.

Smith mischaracterizes Division III's holding, however. The Court of Appeals recognized that the resolution of the issue rested on a finding of

fact by the trial court that was supported by substantial evidence. The Court of Appeals actually held:

> We agree with Rita Smith that earnings arising from a spouse's services performed during the marriage constitute community property. Nevertheless, the dissolution [trial] court concluded, based on clear and convincing evidence, "that the sale was a stock sale and not a payment for future wages or some other characterization." CP 624-25. Substantial evidence supports the trial court's findings.

*Miller*, 2020 WL 589544 at *10 (brackets added).

At trial, Smith argued the 2007 sale of MWR to Ascentium constituted the sale of Miller's "marital earning power" from 2008 - 2011, and was therefore community property. Miller argued that what he sold was his ownership in a successful advertising firm with substantial revenues, and he did not sell future earnings because he intended to retire. The evidence at trial was that MWR's total assets were over $1.4M, with recent annual revenues of $6-7M. The sale agreement was entitled "Stock Purchase Agreement." Miller and Smith's tax returns from 2007-2010 recorded the sale as a sale of stock or asset sale. Miller offered expert testimony from CPA Zoe Foltz regarding the nature of the 2007 Sale. Miller testified that upon the sale of MWR, he did not intend to continue working because his plan was to retire. Based on the evidence, the trial court found that the 2007 sale was a sale of stock and not a sale of future earnings.

Smith insists that the 2007 SPA constituted a sale of future earnings because the noncompete provision in § 5.5, which appears on page 20 of the 32-page SPA, "is the only section specifically deemed 'material and of essence to [the] agreement." Pet. at 11 n.4. But this argument overlooks both

the structure of the agreement and the facts surrounding its execution. In MWR, Ascentium obtained a valuable corporate concern that generated substantial income. While Ascentium did not enter into the agreement to purchase Miller's forbearance, as the salesman who secured its most lucrative accounts, his forbearance from competing with Ascentium after the sale was arguably necessary to protect the value of Ascentium's asset purchase. This reading of the contract finds support in the non-compete section of the SPA, which explains that Ascentium desired to purchase MWR assets, and that Miller's forbearance was "necessary to protect the goodwill, trade secrets, confidential or proprietary information, and other legitimate interests of the Company and buyer." Ex. R 361 at 972 § 5.5(e). Smith's reliance on selected portions of the non-compete fails to read the contract as a whole and ignores the circumstances surrounding the sale.

Appellant cites *Cirrito v. Cirrito*, 605 S.E.2d 268 (Va. 2004) and *Grigsby v. Grigsby*, 648 N.W.2d 716, 723 (Minn. Ct. App. 2002), apparently to demonstrate instances in which courts have found that a spouse's forbearance of work constituted community property. *See* Pet. for Rev. at 9. Both cases are unhelpful to the question here, which is whether, as a matter of fact, Miller sold future earnings. In *Cirrito* and *Grigsby*, it was understood that the agreements constituted the sale of future earnings; the question there was whether the earnings accrued during the marriage.

Smith also cites *Demont v. Demont*, 67 So.3d 1096 (Fla. Dist. Ct. App. 2011), arguing that decision finds "flawed" the rulings below

regarding the 2007 sale and the relevance of Miller's intent to retire. However, Smith's argument both misconstrues *Demont* and misapprehends the relevance of Miller's intent to retire. In *Demont,* around the time the parties separated, the husband executed a separation agreement with his employer that included a noncompete agreement. One payment under the agreement was to be paid in exchange for the husband's agreement not to compete after the couple's date of separation. The trial court likened the non-compete payment to a retirement package and deemed it a marital asset. *Demont*, 67 So.3d at 1106. The appellate court reversed. It held that "in no reasonable way can the non-compete/non-solicit payments be described as 'like retirement.'" *Id.,* 67 So.3d at 1106. It was undisputed that the payment received by the husband was paid by his previous employer in consideration for his agreement not to compete. In contrast, in this case Miller was not negotiating with a previous employer and he has never contended that the proceeds of the 2007 sale operated like a retirement package. The issue here related to the nature of the 2007 sale, and what the primary assets were that each party desired and obtained. Miller's intent to retire was simply relevant evidence that Miller did not forego future work in the exchange.

Contracting parties' intent is gleaned from the "objective manifestations of the agreement." *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). Contracts are read as a whole, and where ambiguity exists, extrinsic evidence is admissible. *See Hearst*, 154 Wn.2d at 502. In interpreting contracts, the trial court must

identify and adopt the meaning that reflects the parties' intent; the appellate court reviews the trial court's decision for substantial evidence. *See In re Marriage of Boisen,* 87 Wn. App. 912, 920-21, 943 P.2d 682 (1997).

Here, based on the evidence at trial, including the terms of the 2007 SPA, the tax returns, the testimony of Miller and the testimony of CPA Zoe Foltz, the trial court found that "the evidence was clear and convincing that the sale was a stock sale and not payment for future wages or some other characterization." CP 624, FOF ¶ 22 D.9. The appellate court correctly held that there was substantial evidence to support this finding.

### C. The Proceeds Of The 2007 Ascentium Sale Were Miller's Separate Property Because The MWR Stock Sold To Ascentium Was Traceable To The 458 Shares Miller Acquired In 1993, Before The Relationship With Smith Began.

Alternatively, Smith contends that even if what Miller sold in 2007 was his 458 shares in MWR and not future earnings, the shares were community property because they were transmuted from a separate to a community asset by operation of the 2005 wage bonus that was retained by MWR and later converted to paid in capital. Smith contends that review is warranted because Division III's decision conflicts with this Court's decisions in *In re Marriage of Zahm*, 138 Wn.2d 213, 223, 978 P.2d 498 (1999) and *In re Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995), "which hold that property acquired during a marriage is presumed to be community in character." Pet. at 12.

But the court's ruling is consistent with *Zahm* and *Short*. Smith's argument was rejected not because the trial court ignored this rule of law,

but because there was substantial evidence to support the trial court's finding that the shares sold in 2007 were acquired in 1993, and that the later contribution to paid in capital did not constitute a purchase of new stock. The appellate court actually held that "[t]he dissolution court, based on the evidence as a whole, could reasonably conclude that the wage bonus did not purchase any of the corporate stock." *Miller*, 2020 WL 589544 at *10 (brackets added). The court's opinion does not conflict with any decision of this Court.

Smith cites *Davidson v. Comm'r of Internal Revenue*, 305 U.S. 44, 45, 59 S. Ct. 43, 83 L. Ed 31 (1938) and *Turan v. Comm'r of Internal Revenue*, 2017 WL 3034639, 114 T.C.M. (CCH) 65 (T.C. 2017) for the proposition that a "stock's 'cost basis' as represented on a federal tax return is controlling as to the identity of the *specific* stock sold." Pet. at 12. However, *Davidson* and *Turan* simply hold that when taxpayers hold multiple lots of stock, they must compute their gains or losses according to the basis of the stock actually sold. *See Davidson,* 305 U.S. at 46; *Turan*, 2017 WL 3034639, at *2. Neither case holds or even suggests that investing additional funds in existing shares constitutes a new acquisition of stock.[4]

Smith also argues that the loan converted to paid in capital constituted a "recapitalization" and this effectuated a transmutation from separate to community property as a matter of law. Pet. at 12-17. She cites

[4] Smith cites a number of cases for the proposition that parties "often attempt to gain a stepped-up cost basis in corporate stock in corporate acquisitions and mergers." Pet. at 14-15. These general propositions are undisputed and irrelevant to her claim here.

a number of cases that describe circumstances in which stock is deemed to be "recapitalized." *See* Pet. at 15-16 (citing *Heady v. C.I.R.,* 162 F.2d 699 (7th Cir. 1947), *Berner v. United States,* 282 F.2d 720, 725 (Ct. Cl. 1960) and *United Gas Improvement Co. v. Comm'r of Internal* Revenue, 142 F.2d 216, 218 (3d Cir. 1944)). In these cases, status as recapitalization was critical because it triggered tax consequences. *See, e.g., United Gas Improvement*, 142 F.2d at 218 (status of transaction as recapitalization relevant to recognition of gains or losses for tax purposes); *Helvering v. Southwest Consolidated Corp.*, 315 U.S. 194, 201-02, 62 S.Ct. 546 , 86 L.Ed. 789 (1942) (recapitalization relevant to whether under 26 U.S.C. § 368 corporate transaction was exempt from taxation). None of these cases hold, *or even address,* whether paying additional capital into existing stock effectuates a new stock acquisition for community property purposes. And this makes sense; while federal statutory law governs tax issues, legal issues surrounding ownership rights in a dissolution proceeding are matters of state law. *See U.S. v. Mitchell*, 403 U.S. 190, 197, 91 S.Ct. 1763, 29 L.Ed.2d 406 (1971) (recognizing that in resolving the tax implications after a dissolution, "state law controls" issues of property ownership, "but the federal statute determines when and how they shall be taxed").

Community property law in Washington is fundamentally a creature of statute. *See Bortle v. Osborne,* 155 Wash. 585, 596, 285 P. 425 (1930). RCW 26.16.010 defines separate property as property "owned by a spouse before marriage and that acquired by him or her afterwards by gift, bequest,

devise, descent, or inheritance, with the rents, issues and profits thereof." In applying statutory provisions, this Court recognizes the "general rule" that the character of an asset is determined "at the time legal title (and ownership) is obtained." *In re Marriage of Chumbley,* 150 Wn.2d 1, 8, 74 P.3d 129 (2003). Separate property continues to be separate through all its changes and transitions so long as it can be clearly identified; profits from separate property remain separate property. *See Hamlin v. Merlino*, 44 Wn.2d 851, 857, 272 P.2d 125 (1954). In Washington, the general rule is that where a spouse establishes the separate character of an asset, a subsequent community contribution does not effectuate a transmutation of the property's character from separate to community. *See Estate of Borghi,* 167 Wn.2d at 491 n.7.

Here, the court found that the proceeds of the 2007 sale were acquired with Miller's separate interest in the 458 shares he received in 1993. CPA Foltz testified that Miller's 458 shares from 1993 were the same shares he sold to Ascentium in 2007, and he did not acquire new stock when MWR converted the wage bonus to paid in capital. This process altered Miller's cost basis for tax purposes but not his ownership interest in MWR.[5] Substantial evidence supported the trial court's consistent finding.[6]

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[5] Under Washington law, "shares" are generally understood as the measure of proprietary ownership in a company. *See* RCW 23B.01.400 (defining "shares" as "the units into which the proprietary interests in a corporation are divided"). Federal tax law provides that "cost basis" determines capital gains for tax purposes. *See* 26 U.S.C. 1012, § I.R.C. 1012.

[6] Smith also argues that Miller is "estopped" from arguing the proceeds of the 2007 sale are his separate property. See Pet. at 16-17. This argument essentially re-fashions the basic premise of Smith's prior arguments, which is that declaring a stepped-up cost basis in the 458 shares of MWR "identified" the stock sold as stock newly "acquired" with the loan converted to paid in capital. But as the trial court found and for the additional reasons

### D. The Trial Court Correctly Applied *Hickman* And Awarded The Fire Insurance Proceeds To Miller and Smith According To Their Proportionate Share Of The Insured Assets, But Even Under The Rule In *Aetna*, The Trial Court's Award Would Be Proper.

Smith also challenges the Court of Appeals' decision upholding the trial court's characterization of the fire insurance proceeds. The trial court recognized the rule that "'[f]ire insurance proceeds stand in the place and stead of the property insured and partake of the same character.'" CP 628, FOF ¶ 22 G.2 (brackets added) (quoting *In re Hickman's Estate*, 41 Wn.2d 519, 523, 250 P.2d 524 (1952)). The trial court awarded the structural damage funds based on the parties' proportionate ownership in the home. CP 629, FOF ¶ G.15. Regarding the contents, the trial court noted no segregation had been conducted, treated the contents as community property and awarded each party half of the proceeds. CP 629, FOF ¶ G.13.

Smith insists *Hickman* was overruled by *Aetna Life Ins. Co. v. Wadsworth*, 102 Wn.2d 652, 659-60, 689 P.2d 46 (1984). She claims entitlement to the entire proceeds because pursuant to the trial court's temporary order from August of 2014, she indirectly paid the premiums for the relevant term in the form of maintenance payments. *See* Pet. at 6-7, 17-19; *see also* App. Op. Br. at 34 (citing CP 47). Smith is incorrect on both the law and the facts.

First, *Hickman* remains good law and was not overruled by *Aetna.* In *Aetna*, this Court held that "the character of funds used to pay the most

---

detailed in this Answer, *see supra* at §§ II and IV.C, the additional paid-in capital did not constitute an acquisition of new stock, but merely a step up in cost basis for tax purposes.

recent term should determine the character of a term life insurance policy." 102 Wn.2d at 659. It neither stated nor implied the rule it adopted applied to fire insurance. Indeed, the same year this Court decided *Aetna,* it recognized the rule from *Hickman* applies in the context of fire insurance. *See Matter of Marriage of Lindsey*, 101 Wn.2d 299, 306, 678 P.2d 328 (1984) (quoting *Hickman* and stating fire insurance proceeds "stand in the place and stead of property insured and partake of the same character").

Smith cites *Matter of Estate of Bellingham*, 85 Wn. App. 450, 455, 933 P.2d 425 (1997). However, while *Bellingham* did apply *Aetna* to mortgage life insurance, the court *distinguished* cases, like *Hickman,* that involve fire insurance policies:

> [W]e must reject the trial court's reliance on *In re Estate of Hickman. . . and In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 855 P.2d 1210 (1993). Those cases concern fire insurance proceeds, which the court held assumed the character of the *property* insured... Because this case concerns life insurance rather than fire or property insurance, the *Hickman* line of cases does not apply.

*Bellingham*, 85 Wn. App. at 455 (brackets added; citations omitted). Smith cites no Washington case applying *Aetna* in the context of fire insurance.

Moreover, Smith's claim that she paid the premiums with her separate maintenance payments is inconsistent with the record. Throughout the pendency of these proceedings, the premiums were paid by Miller pursuant to a temporary order requiring him to pay all household expenses. CP 47. The order did *not* designate the entire payment as maintenance, but instead provided that the "*pro rata* share attributable to the wife shall be

designated as maintenance." CP 47 (emphasis added).[7] Thus, even if there were any doubt regarding legal entitlement to fire insurance proceeds, it would be irrelevant on these facts. Under either legal rule, the trial court's distribution of the proceeds would be correct, and the Court of Appeals correctly so held.

**E. Fees Are Not Warranted.**

Finally, Smith seeks fees on appeal. Whether to award fees falls within the discretion of the appellate court. *See* RCW 26.09.140; RAP 18.1. The trial court rejected Smith's request for fees, noting that Smith received an estate valued at over $1.5 million. CP 620-21, FOF ¶ 14. While Smith maintained she was entitled to fees due to her post-separation debt, the court found that Smith's debt was due in large part to her decision not to work throughout the pendency of these proceedings, despite the fact she was 54 years old and had the capacity to earn approximately $80,000/year. It also noted Smith hired six different attorneys in the course of litigating this matter. The appellate court similarly denied fees, relying on the same facts, and also finding Smith's financial affidavit not credible. *See Miller*, 2020 WL 589544 at *17.

This Court should not revisit these rulings nor should it award fees here. Smith received an estate valued at over $1.5 million. The trial court found her post-separation debt was largely due to decisions she made throughout the proceedings. Additionally, the appellate court expressed

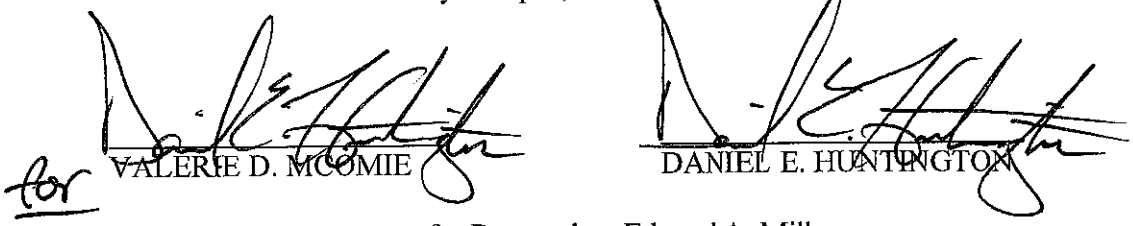
[7] Regarding her "rebuilding" of the damaged home, Smith failed to submit any evidence valuing her work or management. *See* Op. at 30.

skepticism about Smith's representations regarding her financial situation. The decisions of the trial court and the Court of Appeals should remain undisturbed. Fees are not warranted.

## VI. CONCLUSION

This Court should deny review.

DATED this 8th day of April, 2019.



for VALERIE D. MCOMIE

DANIEL E. HUNTINGTON

Attorneys for Respondent Edward A. Miller

# APPENDIX A

EXECUTION COPY

# STOCK PURCHASE AGREEMENT

BY AND AMONG

ASCENTIUM CORPORATION,

MILLER.WHITERUNKLE INC.

AND

MR. EDWARD A. MILLER

DATED AS OF DECEMBER 29, 2007

RYS

MILLER v. YTURRI-SMITH
Case No. 14-3-00584-7
Exhibit No. R-361
Disposition:_____

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## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "***Agreement***"), dated as of December 29, 2007, is made and entered into by and among Ascentium Corporation, a Washington corporation ("***Buyer***"), Miller.whiterunkle Inc., a Washington corporation (the "***Company***") and Edward A. Miller (the "***Shareholder***"), the sole shareholder of the Company. The terms used herein and not otherwise defined shall have the meanings set forth in ***Exhibit A*** hereto.

### RECITALS

A. The Shareholder owns the Shares and desires and intends to sell the Shares to Buyer at the price and on the terms and subject to the conditions set forth below.

B. Buyer desires and intends to purchase the Shares from the Shareholder at the price and on the terms and subject to the conditions set forth below.

### AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties hereby agree as follows:

### ARTICLE I.- PURCHASE AND SALE OF SHARES

**Section 1.1. Purchase and Sale of Shares.** Subject to the terms and conditions of this Agreement, Buyer agrees to purchase the Shares from the Shareholder, and the Shareholder agrees to sell, convey, assign, transfer and deliver all of the Shares that are issued and outstanding at the time of the Closing to Buyer free and clear of all Encumbrances.

i.e the consulting agree

**Section 1.2. Consideration for Shares.** Subject to the terms and conditions of this Agreement, the aggregate purchase price for all of the Shares shall be an amount in cash up to $2,225,000 and shall consist of (i) the Initial Payment Amount, (ii) the Second Payment Amount (if any), (iii) the Third Payment Amount (if any), each of which shall be subject to adjustments as set forth in this Agreement and (iv) the Indemnification Fund (the "***Total Purchase Price***"). Such consideration shall be paid at the times and in the manner set forth in this Article I.

(a) **Initial Payment Amount.** Subject to the terms and conditions of this Agreement, on January 2, 2008 Buyer shall pay the Shareholder $625,000 in cash (the "***Initial Payment Amount***") in the manner provided in Section 1.2(e).

(b) **Second Payment Amount.** Subject to the terms and conditions of this Agreement, on March 31, 2008 Buyer shall pay the Shareholder an amount in cash equal to (i) $700,000, plus any accrued and unpaid interest thereon less (ii) the Additional Holdback Amount (the "***Second Payment Amount***") in the manner set forth in Section 1.2(e). If as of March 31, 2008 Buyer shall not have consummated a financing generating net proceeds to Buyer in excess of $10,000,000, Buyer may, at its discretion, defer payment of the Second Payment Amount until the earlier to occur of (i) the third business day after the day on which such financing is consummated and (ii) June 30, 2008.

(c) **Third Payment Amount**. Subject to the terms and conditions of this Agreement, on June 30, 2008, Buyer shall pay the Shareholder an amount in cash equal to (i) $500,000 plus any accrued and unpaid interest thereon (which amount shall be subject to adjustment in accordance with Section 1.2(g)(iii)) less (ii) the Additional Holdback Amount (the "***Third Payment Amount***") in the manner set forth in Section 1.2(e).

(d) **Indemnification Fund**. $400,000 in cash (the "***Indemnification Fund***") shall be available to serve as partial security for Shareholder's indemnification obligations under Article VII and Shareholder's failure to pay the post closing adjustment to the Third Payment Amount (if any) in accordance with Section 1.2(g)(iii). On September 30, 2008, Buyer shall release to Shareholder $250,000 from the Indemnification Fund less the aggregate amount in cash that is then subject to a claim for indemnification pursuant to Article VII. On the End Date, Buyer shall release to Shareholder an amount in cash equal to the remaining amount in the Indemnification Fund less the aggregate amount in cash that is then subject to a claim for indemnification pursuant to Article VII.

(e) **Payment Method**. Subject to the terms and conditions of this Agreement, the Buyer shall deliver each portion of the Total Purchase Price by wire transfer of immediately available funds to the accounts designated in writing by Shareholder.

(f) **Operation of Business**. Seller acknowledges that Buyer engages in business activities similar to those of the Company, and may have the same or similar customers, partners, etc. and agrees that Buyer may continue to engage in its business activities. Seller acknowledges that Buyer and its affiliates shall have the right to cause the Company to take any actions which it may in good faith determine, in its sole discretion, to be necessary or appropriate with respect to the operation of the Company, Buyer and their respective affiliates, and that Seller shall not have any claim against Buyer for any action or omission that was undertaken by or on behalf of Buyer or any of its affiliates in its good faith business judgment.

(g) **Purchase Price Adjustment**.

(i) As soon as practicable after the Closing Date, and in any event no later than January 25, 2008, Seller will cause to be prepared and delivered to Buyer an estimated unaudited balance sheet of the Company as of the Closing Date (the "***Closing Balance Sheet***") and a statement (the "***Closing Working Capital Statement***") prepared in accordance with Section 1.2(g) of the Disclosure Schedule, setting forth the calculation of Net Working Capital as derived from the Closing Balance Sheet ("***Closing Net Working Capital***").

(ii) The Closing Working Capital Statement shall be subject to Buyer's review and satisfaction for a period of ninety (90) days following the date of delivery (the period from and excluding the date of delivery to such date, the "***Working Capital Review Period***"). The Closing Working Capital Statement shall be final and binding on each of the parties hereto unless Buyer objects and delivers a written notice of disagreement to the Shareholder prior the end of the Working Capital Review Period (the "***Objection Notice***"). Such Objection Notice shall specify in reasonable detail the item or items in dispute (the "***Disputed Items***") and shall state the amount of any adjustment that Buyer believes should be made to the Closing Working Capital Statement. In the event of a disagreement over the Closing Working Capital Statement, Buyer and the Shareholder shall use commercially reasonable efforts to resolve their dispute within twenty (20) days following the delivery of the Objection Notice to adjust the Closing Working Capital Statement in a form reasonably agreeable to Buyer and the Shareholder. If Buyer and the Shareholder are unable to agree upon the Closing Net Working Capital within such (20) twenty day period, the Shareholder

and Buyer shall select a nationally recognized accounting firm mutually acceptable to Buyer and the Shareholder (the "***Independent Firm***") to resolve any disputes regarding the Closing Working Capital Statement and the Closing Net Working Capital. The Shareholder and Buyer will direct the Independent Firm to render a determination within thirty (30) days of its retention, and the Shareholder and Buyer will cooperate with the Independent Firm during its engagement. The Independent Firm will consider only those issues related to the Closing Working Capital Statement and the Closing Net Working Capital that the Shareholder and Buyer have been unable to resolve and shall only resolve the Disputed Items by choosing the amounts submitted by either Buyer or Shareholder or amounts in between. The determination of the Independent Firm will be conclusive and shall become final and binding upon the parties and any changes to the Closing Working Capital Statement and the Closing Net Working Capital determined by the Independent Firm shall be incorporated into the Closing Working Capital Statement (the Closing Working Capital Statement, as so adjusted or as adjusted by the mutual consent of Buyer and the Shareholder or the Independent Firm, the "***Post-Closing Working Capital Statement***"). The Shareholder and Buyer shall each pay one half of the fees and expenses of such Independent Firm.

(iii) The Third Payment Amount shall be decreased by the amount by which the Closing Net Working Capital as finally determined pursuant to Section 1.2(g)(ii) is less than $325,000 ("***Target Net Working Capital***"), the Third Payment Amount as so decreased being the "***Adjusted Third Payment Amount***"). If the Adjusted Third Payment Amount is less than zero, Shareholder shall pay to Buyer an amount in cash equal to the absolute value of the difference between the Adjusted Third Payment Amount and zero no later than July 5, 2008. Any such payment hereunder shall be made by wire transfer of immediately available funds to an account designated in writing by Buyer. For the avoidance of doubt, the parties acknowledge and agree that the Company shall satisfy all liabilities taken into account for the purpose of calculating Closing Net Working Capital and Shareholder's obligations (if any) with respect to such liabilities shall be satisfied in accordance with Section 1.2 hereof.

**Section 1.3. Closing.** The closing of the transactions contemplated herein (the "***Closing***") shall be on December 31, 2007, and shall be held at the offices of the Buyer, or such other time and date as Buyer and the Company shall agree. The date upon which the Closing occurs is referred to herein as the "***Closing Date***". At the Closing, each of Buyer, the Company and the Shareholder shall take all such action and deliver all such funds, documents, instruments, certificates and other items as may be required, under this Agreement or otherwise, in order to perform or fulfill all covenants, conditions and agreements on its part to be performed or fulfilled at or before the Closing Date and to cause all conditions precedent to the other parties' obligations under this Agreement to be satisfied in full.

**Section 1.4. Required Withholding.** The Buyer shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement amounts as may be required to be deducted or withheld therefrom under the applicable tax law, including under any provision of state, local or foreign tax law or under any other applicable legal requirement as determined in good faith by Buyer. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

**Section 1.5. Interest.** Interest at a rate per annum equal to five percent (5%), calculated on the basis of the number of actual days elapsed and a year of 365 days, of the unpaid portion of each of the Second Payment Amount, Third Payment Amount and Indemnification Fund shall accrue from and including the Closing Date to but excluding the date on which such amount is paid (in the case of the Second Payment Amount and Third Payment Amount) or released (in the case of the Indemnification Fund); *provided* that if Buyer shall exercise its right to defer payment of the Second Payment Amount, interest on the Second

Payment Amount shall accrue at a rate of ten percent (10%) from and including the date on which the Second Payment Amount was to be paid to but excluding the date on which the Second Payment Amount is paid. Interest on the Second Payment Amount and Third Payment Amount shall be paid monthly in arrears on the last day of each calendar month, *provided* if such day is not a business day, such interest shall be paid on the next immediately following business day. For the avoidance of doubt, interest on any portion of the Second Payment Amount or Third Payment Amount that is held back and included in the Additional Holdback Amount pursuant to Section 7.5 shall not be paid in accordance with the immediately preceding sentence but shall be deemed, together with interest on the Indemnification Fund, part of the Indemnification Fund and shall be compounded monthly on the last day of each calendar month. The Indemnification Fund (including any interest thereon) shall be released in accordance with Section 1.2(d).

## ARTICLE II. - REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDER

Except as set forth in the Disclosure Schedule, which disclosures shall specifically identify the paragraph or paragraphs of this Article II to which such disclosures relate, and which shall constitute in its entirety a representation and warranty under this Article II, the Shareholder represents and warrants to Buyer as of the Closing as follows in this Article II:

**Section 2.1. Good Title.** The Shareholder owns, beneficially and of record, the entire share capital of the Company. Such Shares are owned free and clear of any Encumbrance, restriction on sale, transfer or voting (other than restrictions imposed by applicable securities laws), preemptive right, option or other right to purchase of any Person. Upon the consummation of the sale of such Shares as contemplated hereby, Buyer shall have valid title to such Shares and shall be the record owner thereof, free and clear of any Encumbrance, restriction on sale, transfer or voting (other than restrictions imposed by applicable securities laws), ~~preemptive right~~, option or other right to purchase of any Person. The Shares are uncertificated and represented by entries into the books and records of the Company.

**Section 2.2. Authority.** The Shareholder has all requisite power, right and authority to enter into this Agreement and the other Transaction Documents to which it is a party, to consummate the transactions contemplated hereby and thereby, and to sell and transfer such Shares without the consent or approval of any other Person. Such Shareholder has taken, or shall take prior to the Closing, all actions necessary for the authorization, execution, delivery and performance of this Agreement and the other Transaction Documents.

**Section 2.3. Enforceability.** This Agreement has been, and the other Transaction Documents to which the Shareholder is a party on the Closing shall be, duly authorized, executed and delivered by the Shareholder, and this Agreement is, and each of the other Transaction Documents will constitute a legal, valid and binding obligation of such Shareholder, enforceable against the Shareholder in accordance with its terms.

**Section 2.4. No Approvals or Notices Required; No Conflicts.** The execution, delivery and performance of this Agreement and the other Transaction Documents by the Shareholder, and the consummation of the transactions contemplated hereby and thereby, shall not (a) constitute a violation (with or without the giving of notice or lapse of time, or both) of any provision of any law or any judgment, decree, order, regulation or rule of any court, agency or other governmental authority applicable to such Shareholder, (b) require any consent, approval or authorization of, or declaration, filing or registration with, any Person, (c) result in a default (with or without the giving of notice or lapse of time, or both) under, acceleration or termination of, or the creation in any party of the right to accelerate, terminate, modify or cancel, any agreement, lease, note or other restriction, Encumbrance, obligation or liability to which the Company is a party or by which it is bound or to which any assets of the Company are subject, or (d) result in the creation of

any Encumbrance upon the assets of such Shareholder, or upon any Shares or other securities of the Company.

**Section 2.5. Absence of Claims by Shareholder**. The Shareholder does not have any claim against the Company, contingent or unconditional, fixed or variable under any contract or on any other basis whatsoever, whether in equity or law.

**Section 2.6. Brokers' and Finders' Fees**. The Shareholder has not engaged any brokers, finders or agents, and neither the Buyer nor the Company has, nor shall, incur, directly or indirectly, as a result of any action taken by the Shareholder, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby.

**Section 2.7. Rights to Intellectual Property**. The Shareholder owns no Intellectual Property Rights used in the Company's business as presently conducted or as currently proposed by the Company to be conducted.

**Section 2.8. Tax Advisors**. The Shareholder has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of the transactions contemplated by this Agreement and the other Transaction Documents. With respect to such matters, the Shareholder is relying solely on such advisors and not on any statements or representations of the Buyer or any of its agents, written or oral. The Shareholder understands that it (and not the Buyer or the Company) shall be responsible for its own tax liability that may arise as a result of the transactions contemplated by the Agreements and the other Transaction Documents.

## ARTICLE III.- REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDER REGARDING THE COMPANY

For the avoidance of doubt, it is acknowledged and agreed by the parties hereto that the representations and warranties regarding the Company are intended to encompass the Company and each subsidiary thereof unless it is reasonably apparent on the face of any such representation and warranty that such representation and warranty applies solely to the Company. Except as set forth in the Disclosure Schedule, which disclosures shall specifically identify the paragraph or paragraphs of this Article III to which such disclosures relate, and which shall constitute in its entirety a representation and warranty under this Article III, the Shareholder represents and warrants to Buyer as of the Closing as follows in this Article III:

**Section 3.1. Company Organization and Good Standing**. The Company is a corporation duly incorporated, validly existing and authorized to conduct business in the corporate form under the laws of the state of Washington. The Company is duly qualified, licensed and admitted to do business and is in good standing in each jurisdiction in which the character of the Company's properties owned, occupied or held under lease or the nature of the business conducted by the Company makes such qualification necessary. The Company has all requisite power, right and authority to own, operate and lease its properties and assets, and to carry on its business as now conducted, to execute, deliver and perform its obligations under this Agreement and the other Transaction Documents to which it is a party, and to carry out the transactions contemplated hereby and thereby.

**Section 3.2. Corporate Authority; Enforceability**. All actions on the part of the Company and its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of

this Agreement and the other Transaction Documents, the consummation of the transactions contemplated hereby and thereby, and the performance of all of the Company's obligations under this Agreement and the other Transaction Documents have been taken or shall be taken prior to the Closing. This Agreement has been, and the other Transaction Documents to which the Company is a party on the Closing shall be, duly executed and delivered by the Company, and this Agreement is, and each of the other Transaction Documents to which it is a party on the Closing shall be, a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

**Section 3.3. Capitalization.**

(a) The authorized capital stock of the Company consists of 50,000 shares of Common Stock, $1.00 par value (the "***Common Stock***").

(b) The issued and outstanding capital stock of the Company consists and as of the Closing shall consist solely of 458 shares of Common Stock, all of which are and as of the Closing shall be held of record by the Shareholder. All shares of Common Stock that are issued and outstanding are, and as of the Closing Date shall be, duly authorized and validly issued, fully paid and nonassessable, and issued in compliance with all applicable securities laws. Except for the Shareholder, no Person holds any interest in any Shares. There are no declared or accrued but unpaid dividends with respect to any shares of Company capital stock. The Company has never issued any certificates representing shares of its capital stock, and the Shares are uncertificated and represented by entries into the books and records of the Company.

(c) Except as stated in Section 3.3(c) of the Disclosure Schedule, there are no outstanding rights of first refusal, co-sale rights, "drag-along" rights, preemptive rights, Options, warrants, conversion rights or other agreements, either directly or indirectly, for the purchase or acquisition from the Company of any Shares or other securities of the Company.

(d) The Company is not a party or subject to any agreement or understanding, and there is no agreement or understanding between any Persons, that affects or relates to the voting or giving of written consents with respect to any securities of the Company or the voting by any director of the Company or that concerns the rights or obligations of Shareholder of the Company.

**Section 3.4. Subsidiaries and Affiliates.** The Company does not have, and has never had, any subsidiaries other than Insite Web Design, Inc., a Washington corporation ("***Insite***"), which holds no assets, has no liabilities, conducts no operations, has no employees and is not a party to any contracts, executory agreements, instrument or other arrangement. The Company does not own, directly or indirectly, any ownership, equity, profits or voting interest in, or otherwise control, any corporation, limited liability company, partnership, joint venture or other entity, and has no agreement or commitment to purchase any such interest other than all of the capital stock of Insite.

**Section 3.5. No Approvals or Notices Required; No Conflicts.** The execution, delivery and performance of this Agreement and the other Transaction Documents by the Company, and the consummation of the transactions contemplated hereby and thereby, shall not (a) constitute a violation (with or without the giving of notice or lapse of time, or both) of any provision of any law, regulation, rule or directive or any judgment, decree, order, regulation or rule of any court, agency or other governmental authority applicable to

## CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of April, 2020, I electronically filed the foregoing document with the Clerk of the Court using the Washington State Appellate Courts Portal and also served the foregoing document via email to the following:

**Counsel for Appellant**:
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Attorney for Respondent Edward A. Miller

## April 08, 2020 - 4:25 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 98263-5 |
| **Appellate Court Case Title:** | In re Marriage of Edward A. Miller and Rita L. Yturri-Smith |
| **Superior Court Case Number:** | 14-3-00584-7 |

**The following documents have been uploaded:**

- 982635_Answer_Reply_20200408162218SC201871_5067.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  *The Original File Name was Miller Final Answer to Petition .pdf*

**A copy of the uploaded files will be sent to:**

- Mary@mschultz.com
- danhuntington@richter-wimberley.com
- dgs@randalldanskin.com

**Comments:**

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Sender Name: Valerie McOmie - Email: valeriemcomie@gmail.com
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4549 NW ASPEN ST
CAMAS, WA, 98607-8302
Phone: 360-852-3332

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