

70439-7

70439-7

No. 70439-7-1

IN THE COURT OF APPEALS FOR  
THE STATE OF WASHINGTON  
DIVISION I

In Re the Marriage of:

PAMELA MOORE,

Appellant,

Vs.

DANIEL MOORE,

Appellee/  
Respondent

REPLY BRIEF OF APPELLANT

By:

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## INTRODUCTION

The Respondent's brief is remarkable for his studied indifference to the facts in this case. What a bold assertion he makes that Appellant's brief based largely in dicta (sic). Nothing could be further from the truth. The Respondent (Dan) fails throughout his brief to cite to the correct record or offer any evidence to support his argument.

The Appellant's Brief laid out the repeated abuse of discretion by the trial court regarding the division of assets, debts, the assignment of child support and the award of attorney's fees to Respondent. The content contained in Appellant's Brief is based on the record and the actual evidence presented.

The trial court failed to perform anything resembling an equitable division based on facts and evidence presented. The decisions reached by the trial court were unfair and not based on the information presented. It was an abuse of discretion for the trial court to unfairly leave an outcome that awarded Respondent 68% of the property. The grossly inequitable result was not the best situation for both parties. Appellant (Pam) has provided substantial evidence to validate the repeated errors and abuse of discretion of the trial court in this case.

It is undisputed that Respondent was not allowed to liquidate all of the community assets for his personal gain. However he did so any way. The trial court did not account for this and did not fairly apply a 50/50 division.

The glaring fact in this case and the reason this court should reverse the trial court's decisions is because it did not have the record or evidence to make the Factual Findings it made. The Amended Decree of Dissolution and the Amended Facts and Findings &

Conclusions of Law are inconsistent with the facts of the case along with the courts orders and rulings. The trial court made certain rulings and gave instructions to the Respondent regarding how the final documents should be prepared. The Respondent did not follow the trial court's orders and the trial court refused to recognize the evidence provided that its orders were ignored in the preparation of final documents.

### **REPLY ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Following trial, during the conference call the trial court decided to allocate a 50/50 split between the parties. RP 5-6, 10-11-2012. The trial court had a further duty to look back at what happened to the assets and how to fix in order to leave a fair distribution. The trial court gave instructions during the oral ruling RP 148-159 of "trial excerpts" and the conference call. RP 1-17, 10-11-12. It was left to Respondent to follow the trial court's instructions and orders in drafting final documents. CP 755-64. This did not happen. Id. The Respondent (Dan) presented the trial court with several facts and findings that were never approved or part of the record. Id. He presented the trial court with a Final Decree and Facts and Findings that did not follow the record or final orders of the trial court. CP 755-64, 1338-49, 1353-65. Every time the Applicant (Pam) objected to paperwork that did not follow the courts orders she was slapped with attorney fees. CP 1350-52, 1934-39.

The trial court failed to base its decisions on the evidence presented and further ignored evidence to mistakes made during trial and the presentation that took place five months later. CP 759-61. Appellant offered information that was part of the record and

the trial court merely accepted Respondent's final documents and ignored Appellant when she attempted to offer the record of what was actually ordered. CP 728-30, 731-48, 755-64, 765-835. This included her providing the court with transcripts of the oral ruling on 9-27-2012 RP 148-159 of "trial excerpts" as well as the conference call where all financial determinations were made on 10-11-2012 RP 1-17. The trial court acknowledged it had several trials between trial and presentation yet did nothing to correct the mistakes in Respondent's final documents. CP 759, RP 30 of 2-14-2013.

### **REPLY STATEMENT OF THE CASE**

A casual reader reading Respondent's brief, without having the benefit of the actual record in this case, or Appellant's opening brief, would be left with the impression that the trial court did nothing wrong. **The crux of the Respondent's entire Brief is that the trial court had the facts and was fair.** The Respondent continually cites facts without citation to the record. Instead he refers to the Amended Decree of Dissolution and the Facts and Findings **written by his attorney** to support his argument. CP 1338-49, 1353-65. Respondent doesn't offer substance or evidence to back up his claims. He is unable to offer evidence to support both the Decree and F&F's because none exists. The record simply does not support the final documents entered. Id. The trial court allowed him to misrepresent and distort the facts throughout the litigation process. Id. He is doing the same in misrepresenting the facts of what happened in his brief.

The Respondent distorts the record, references to facts not found in the record and / or he fails to offer evidence to back up statements in his brief. This includes statements made in his *PROCEDURAL HISTORY, ASSIGNMENTS OF ERROR, STATEMENT OF THE CASE*, and his compounded failure to cite to a record in his *ARGUMENT*. Further he avoids citing to any authority or rules. Instead his brief merely mirrors Appellant's brief in his *STANDARDS OF REVIEW*.

- On RB 6 the record reflects that Appellant filed a cross motion after discovering marijuana and a bong in plain sight of their daughter CP 291, 292-367, and 375-462. RP 22 of 3-28-2012

**THE COURT: *No question in my mind the pot and other items and drug paraphernalia should not have been anywhere in the residence, period. It shouldn't have been in open sight. It shouldn't have been present where a child could see it or even get their hands on it, or be exposed to it.***

- Further, his brief studiously avoids citing any record on RB 9-10, when he states *"But Pam remained defiant...and in his next paragraph "But instead she targeted Dan as the one who should be providing for her, and continued arguing that she deserved more maintenance than what the court had provided"*. The only request the Appellant (Pam) asked from Respondent (Dan) was the amount owed versus the amount he claimed in his final documents. The reality as the record reflects is that he refused to acknowledge his past due support. AB 33-34, 48. CP 758, 1868-1909.
- On RB 11 *"Regardless, Dan continued to meet his financial obligations to both to Pam and to the mortgage lender"*. The record reflects he stopped paying child support and maintenance in April of 2012. CP 728-30, 758, 766, 771, RP 10-11,

18, 2-14-2013. He stopped paying the mortgage in May of 2012. CP 728, 732, 768-71, RP 12-17, 2-14-2013.

- The Respondent attempts mislead this court on RB 12 when in fact it was he who was ordered to obtain the loan based on his liquidation of assets. RP 25 of 3-28-2012.
- Even more misleading is incorrectly stating that Judge Lum originally requested the spreadsheet. RB 12. The record will reflect that the spreadsheet was offered by Respondent and used for illustrative purposes only. AB 41-43, RP 100-101 of “Trial Excerpts” and RP 22 of 2-14-2013.
- Respondent is unable to offer any record or evidence to support his claim on RB 13 that “*Pam refused to acknowledge Dan’s request*”.
- He further he wants to divert this courts attention and portray Appellant of willfully disregarding court deadlines. RB 14.
- Finally, the Respondent’s brief is remarkably silent on the Appellant’s claims that she continued to raise their daughter 70% to his 30% under an unofficial residential schedule. This was the case the year prior to trial and continued to be the case after the trial. CP 729-30, 773-75, 1517-28, 2282-92. The applicant did not ask this court to reverse the Parenting Plan in her opening brief however she points out as part of the record. Id. The reason she points out this portion of the record is because the trial court made financial decisions assuming that Respondent had been acting as primary parent and that he would continue to do so. Id.

The Respondent continually references the Final Amended Decree of Dissolution (CP 1338-49) and the Final Facts and Findings (CP 1353-65). However, in his entire brief, he fails to offer substantial support or reference to the record. He has continued to use the litigation process to mislead and distort the actual record.

### **REPLY ARGUMENT**

The Respondent (Dan) references to facts not found in the record and Appellant (Pam) asks this court to strike his brief for non-compliance with RAP 10.3, 10.4, 10.5(a); which requires reference to the record for each factual statement. RAP 10.4 (f) reference to the record designate the page and part of the record. A brief is improper if it doesn't comply with the rules governing content, preparation and filing under RAP 10.3 and 10.4. Improper briefs can be returned for correction or stricken from the file RAP 10.7.

This court should give no weight to Respondent's statements and should not consider his brief pursuant to RAP 10.7. Appellant moves this court to not consider Respondents Brief. However in an abundance of caution Appellant will offer a record of the errors and failures made by the trial court.

- A. The trial court erred in determining Respondent's income and further abused its discretion in imputing income to Appellant along with leaving her with only a six month maintenance award. AP 22-30.**

1. Respondent offers no supporting record as to the evidence he provided for the trial court to his real income. RB 22. The trial court was not given reasonable evidence to his reduction in income.
2. The trial court ignored the limited and dated evidence Respondent provided. AB 25.
  - In March of 2012 Respondent's attorney explained his income was going down to \$5,700 (net) per month. RP 10 of 3-28-2012:
  - On April 9, 2012 in his declaration Respondent explained his income would be going down to \$5,468 (net) per month. CP 544-45.
  - By the time of presentation on February 14, 2013 Respondent's income was \$4,213 (net) per month: RP 4-5 of 2-14-2013.

The trial court had no evidence other than Respondent's testimony. In his trail exhibit 22 there were no deposits that reflect his reduced income. He did not offer proof of income during the reconsideration process and he has provided no evidence in his brief. CP 731-48, 749-54, 755-64.

3. As was illustrated in Appellant's Opening Brief the Respondent testified twice on his bonus RP 41-45 "trial excerpts". Even if the trial court decided to accept his testimony as evidence to his reduced income it abused its discretion in not including the 10% bonus. Washington law mandates the inclusion of bonuses as part of gross income for child support purposes. RCW 26.19.071(1) AB 26.
4. Respondent presented no evidence or record of Appellant's work history. RB 23. During its oral ruling the trial court found that she was not voluntarily unemployed.

RP 148-150 of “trial excerpts” However the trial court erred in assuming that after two weeks of employment in the last nine years that she had unemployment income to impute. The trial court erred in not using the correct income and worksheets reflecting Respondent’s income and imputing income to Appellant. Imputing income absent of findings is in abuse of discretion. Therefore, this court should reverse and remand for entry of the appropriate worksheets herein.

Further it was also an abuse of discretion for the trial court to assume Appellant only deserved 6 months of maintenance after 13 years of marriage and the length of time Appellant had been out of the workforce. RP 5, 2-14-2013. AB 28-29.

A record which fails to support a trial court's adequate consideration of the two paramount concerns-the parties' standard of living during marriage, and the post-dissolution economic condition-in considering maintenance and a property award, is reversible error. *In re Marriage of Sheffer*, 60 Wash. App. at 57-58. This court has authority to remand the maintenance award for application of the statutory elements. Murray, 28 Wn.App. 187.

**B. The trial court erred when entering initial Decree of Dissolution on February 14, 2013 and approving Dan’s letter of distribution.** AP 30-41. RP 10-38 of 2-14-2013, CP 728-30, 755-64, 765-835, 1719-34. 1922-27. The respondent merely argues that the trial court was not wrong however the trial court’s initial ruling of a fair and equitable distribution of 50/50 is not what the respondent provided for in his documents presented on 2-14-2013. CP 676-86, 698-707, 1922-27.

5. The trial court, without evidence, gave an inequitable credit for all mortgage payments made by Respondent of \$33,984. AB 31-33. The trial court did not order it. RB 17, 10-11-2012. The trial court merely accepted it when the

respondent's council presented the order as final. RP 12-18 of 2-14-2013, AB 31-33, CP 728, 732, 766-71. This was an error. By giving him a credit it created an inequitable and unfair final distribution. Id. The Respondent was the only income earner. Id. He was ordered to preserve the assets. Id. He failed to do so with community retirement accounts and in failing to make the ordered mortgage payments he reduced the last community asset by \$26,011. Id. This was the cost of the Respondent not following the court's order regarding mortgage. Id. The \$26,011 was interest, late and foreclosure fees. Id. The final proceeds of the family home were \$131,128. Had he followed the court's order the net proceeds would have been \$157,139. CP 1719-34. The trial court should have taken away the \$33,984 credit and in addition should have awarded \$26,011 to Appellant.

Appellant provided ample information to the trial at time of presentation that his nonpayment of the mortgage resulted in past due interest, late fees and foreclosure costs that would not be owed if the Respondent complied with court orders to make all mortgage payments. RP 12-18, 2-14-2013. The failure to meet this obligation weighed the additional financial burden \$ 26,011. Id. The following costs and fees are the sole debt of Respondent and should have been deducted from his portion of the proceeds. Id.

Foreclosure fees:	\$2,897.10
Past Due Mortgage	\$23,114.22
TOTAL	\$ 26,011.32

Total payoff with MetLife was 567,322.47 plus 2,897.10 for 570,219.10. Had the Respondent made the court ordered requirement to keep this account current the payoff for MetLife would have been approximately \$544,218.25 per payoff information provided by the lender in 1-8-12. RP 12-18, 2-14-2013. Not only should the trial court have reversed the \$33,984 credit dollar for dollar it should have awarded Appellant at least half of the \$26,011 that the asset was reduced by because he allowed the family home to go into foreclosure. Id. Appellant asks this court to reverse and remand the additional \$7,984 in mortgage credit to respondent along with \$26,011 in fees and interest incurred due to his failure to follow the court's orders. RB 12-18 of 2-14-2013, AB 31-33, CP 766-71, 1719-34.

6. The trial court erred in allowing Respondent to reduce his past due support obligation by \$13,490 and allowing two months to go by before ordering the correction. AB 33-34. CP 925-26, 1719-34 (ex. 2 & 3). It is undisputed that by the time of presentation Respondent owed **\$21,740** in past due undifferentiated support. RP 4-5 of 10-11-12, CP 729, 758-59, 766-69, 771. However Respondent asserted he only owed **\$8,250**. RP 10-11& 18 of 2-14-2013.

In **January 2013** Appellant attempted to have Respondent acknowledge the past due support owed but he refused to do so. CP 1868-1909 (ex 2). He finally acknowledged in **May 2013** Id (ex. 3), AB 48-49.

7. The trial court erred when it failed to recognize **Respondent never accounted for the \$10,500** transitional maintenance AB 34.

The trial court ordered Transitional Maintenance of \$1,750 for 6 months or \$10,500 to be paid with-in 90 days of the family home selling. Respondent did not account for this in the final distribution AB 34. The trial court ordered this during the conference call October 11, 2012, RP 5-6 of 10-11-2012.

*“...the past due and unpaid maintenance that the husband owes the wife, will then subsequently be subtracted or deducted or taken out of the husband's 50 percent share, net share. And then he will also then be responsible for paying an additional sum as maintenance out of his share....however, that the wife will be receiving past due amounts in addition to that – that award.*

*So that would be six months of transitional maintenance and that will come off of –that will come out of the respondent's share of the -- of the sale of the house once it's sold. RP 6 of 10-11-2012.*

Respondent only accounted for **\$8,250 in** his final Decree of Dissolution drafted by his council even though he owed a total of **\$32,240**. The total owed was **\$21,740** in past due undifferentiated support and **\$10,500** in transitional maintenance. CP 772-74. AB 34.

8. The trial court had no evidence to award for studio equipment. RB 24. This was never awarded prior to 2-14-2013. It is no were in the record that the trial court ordered this. The award of studio equipment was never part of the oral ruling on 9-27-2012 RP 148-159 and was never mentioned in the conference call on 10-11-2012 RP 1-17.

The trial court did not know what was sold and should not have awarded \$9,330 to the Respondent. The trial court did not find that this should have been awarded at time of trial and absent of those findings erred in its award. The only

opinion other than the Respondent was from his college roommate who upon both direct and cross examination could not establish any foundation or proof. RP 9-16 "Trial Excerpts". The Respondent was also unable to offer any foundation or proof. RP 117-126 "Trial Excerpts".

Appellant conceded to the one large piece of equipment that had not worked in several years. CP 772-75. The trial court was not convinced at time of trial. RP 9-16, 117-126 of "Trial Excerpts". However at presentation it merely went along with what the Respondent wrote in its final documents. RP 20, 30, 2-14-2103. There was never any proof to what was sold and its value. CP 772-75. Appellant is asking this court to reverse and remand the award of \$9,330. At most award should have been \$1,100 as the evidence and record reflects. AB 35-36.

9. Respondent misrepresented the **401k account at time of trial**. AB 36-37. On direct examination he testified to the amount accounted for on his spreadsheet. RP 81-82 of "trial excerpts". Under the penalty of perjury he testified that the loan of \$17,306 was subtracted from the \$41,344 leaving a balance of **\$24,038**. Id. This was not the case. After Respondent paid the loan, the tax and early withdrawal penalty the net amount of what he collected in May of 2012 was \$30,509. CP 771-774, 948-49, 1055-56, 1922-27, 2098. This was the amount deposited in the bank statements he provided to the trial court. Id. Respondent misrepresented the value to the trial court and the trial court did not use the correct information in making its decision. Id. The true amount of the 401k was over \$40,000 and not the \$24,038 net figure he testified to at time of

trial. Id. Not only should the Appellant receive the difference of \$6,600 she should receive at least half of \$10,000 in taxes and early withdraw fees that was lost due to Respondent's decision to liquidate the asset for his personal gain without her knowledge or approval. Id.

Six months prior the trial the Respondent accounted for over \$40,000 left in the 401k. RP 8 of 3-28-2012. The trial court further ignored evidence during reconsideration of the correct value including an email from the Respondent himself on May 8<sup>th</sup> 2013 admitting the difference. CP 931-42 (ex 3).

*Pam, I noticed that the value of the 401k withdrawal I made back in May 2012 was not accurately reflected on the final decree. In my trial notebook, I shared the past six months of checking account activity, which shows a deposit of \$30,507.30 on May 17<sup>th</sup>, 2012. That was the total amount of the 401k payout. However, the value of that asset in the decree was ~\$6500 less than that, showing \$24,058. So if for some reason this doesn't get corrected in the court decree, I'm happy to honor that difference and make sure it gets accounted for out of the final disbursements from the bank.*

The Respondent never did honor the correct amount as is evident in his brief that "The trial court based its conclusion as to the value of the 401(k) account on all the information presented". RB 24. The trial court abused its discretion by refusing to acknowledge the evidence and correct the difference. CP 760-64, 768-72. 931-42, 1922-27, 2098, AB 37. Appellant asks this court to award the \$6,600 he received yet did not account for along with the \$10,000 in taxes and early withdraw fees that the asset was reduced by because Respondent choose to liquidate for his personal gain.

10. Respondent completely distorts and misrepresents the record of why the **BECU equity line** was ordered and how the funds were to be distributed. RB 24-25. On his

decree and his spreadsheet he was awarded himself 100% of the joint home equity loan amount of \$48,000. AB 38. CP 541-42 760-61, 771-773.

The respondent depleted all of the community stocks and retirement accounts totaling approximately \$88,000. CP 1922-27. When the commissioner ordered the loan there was still one retirement account he had not depleted. CP 541-42, 760-64, 771-73. The loan was ordered only because he had depleted the family wealth for his personal gain. Id.

Respondent states: *“Instead of granting relief, Commissioner Jesske ordered that both Pam and Dan secure a home equity loan...”* RB 12. The record reflects that Commissioner Jesske ordered financial relief for Appellant, not Respondent. On March 28, 2012 Respondent was ordered to make a good faith effort to obtain a line of credit on the family home in order to REPAY Appellant the assets he had already depleted. CP 541-42, 760-61 771, RP 24 of 3-28-2012.

*“Some of that's because you spent it. She's right. And some of that's because you've been living, based on the financials I saw and the places you've been eating and all of those things...” “...but if you really thought you were going to have no more money after April and no income and all of these other concerns, I would have thought you might have been a bit more frugal and restrained a bit of that lifestyle.”*

Commissioner Jesske ordered Respondent to make a good faith effort to secure a home equity loan. RP 25-27 of 3-28-2012:

*I'm going to order that he, in good faith, a real attempt, try to secure either a HELOC or a second or some kind of loan...*

Commissioner Jesske ordered how the loan was to be distributed between the parties and ordered **Respondent not to access the loan until Appellant had taken her allotted amount.** On RP 28-29 of 3-28-2012:

*-- **Mr. Moore**, that means no more golf trips, no more anything else. You have to show that you've spent every penny before you tap that community asset on basic needs. That's things like utilities, the mortgage payment, food, you know. But it's not eating out at a restaurant. It's eating PB&J, because otherwise you're cutting into her community equity and that's not fair either.*

The Respondent's council questioned how the equal draw is to be divided. RP 29-30 of 3-28-2012:

MR. PIERCE:            *What do you mean by "equal," Your Honor?*  
THE COURT:            *I mean, she has to have been able to tap community asset or debt to the same degree he already has to pay you before he gets an equal draw.*  
THE COURT:            *All right. So until she gets 35,000, he can't take an equal draw.*  
MR. PIERCE:            *Gotcha.*  
THE COURT:            *I'm not going to have him get to pull money out and not have it equal to her. All right.*

The Respondent did not make good faith effort and tried to avoid obtaining the loan by filing a motion to reconsideration. It was immediately denied. CP 543-550, CP 558. He again attempts to portray the Appellant as the one who defied the court and is incorrect in stating "*Pam disregarded the court's order by withdrawing the entire amount of the \$48,000 home equity loan for herself, without acknowledging that withdrawal to Dan or to the court*". RB 24. Nothing could be further from the truth. Contrary to Respondent's rendition he was not allowed to access the loan until he had matched Appellant what he had depleted from community assets. RP 29-30 of 3-28-12. It was ordered that before he could take

any amount of money from the loan that he disclose all income and bank statements.

CP 760-61, 771, RP 30, 3-28-12:

*So before you can use that 20 that I'm going to let you have, and that's only to pay those things, you have to give them all your bank statements and show them where it all went, and show that there's none of it left, and you have to **disclose all of your income from any source.***

It was actually the Respondent disregarded the court's order by accessing the loan yet failed to comply with what the court ordered. CP 755-64, 771-73. Respondent was the one who consistently disregarded the courts orders. Id. He violated the restraining order and liquidated community assets on four separate occasions. Id. In addition he accessed the BECU loan against court orders. Id. It was an abuse of the trial court's desecration to allow Respondent and his attorney craft the Fact and Findings to illustrate that Appellant disregarded the court. CP 676-686.

11. Appellant completed **the 2011 taxes. A refund check of \$11,796** was received in April of 2012 in the form of a check. When Respondent stopped paying maintenance and still had not signed the check the Appellant deposited the refund check into the joint BECU account. CP 1922-27. In Respondent's decree and corresponding spreadsheet he added both the \$48,000 loan and refund and called it a savings account of \$59,796 owed to Respondent. CP 698-707.

12. The Citibank credit card debt that the Appellant paid from her portion of the proceeds was never part of the oral ruling on 9-27-2012 RP 148-159 and was never mentioned or ordered in the conference call on 10-11-2012 RP 1-17. The Citibank award to

Respondent was never ordered by the trial court. It is no were in the record that the trial court ordered this. Id

In August of 2011 Respondent threatened Appellant that she better have an attorney by the time he returned from his business trip. CP 8-20, 73-115. She took him seriously and used a portion of the joint credit card as a retainer payment to hire an attorney. Id.

13. **Appellant's post-separation liabilities** were presented to the trial court. CP 1510-16, 1517-28, 2096-2126. Appellant incurred substantial credit card debt following separation: \$4,982 on a Capital One card, \$5,684 on one Citibank card, \$11,215 on another Citibank card, \$1,800 on a First National card. CP 1517-28. She borrowed over \$20,000 from her mom, Sharon Shaffer. CP 1510-16, AP 39.

Appellant went even deeper in debt using her mother's credit cards when she had to pay attorney fees and for the transcripts provided for presentation and the reconsideration process. She was struggling to pay housing, utilities, food and other expenses for both her and their daughter while the home proceeds were held up for over six months after the closing of the home sale. CP 1922-27. Respondent painted Appellant as the problem but she had no reason to hold up needed funds. Respondent had stopped paying support of any kind for nearly a year and she had no other source of income. Id.

While a trial court is not required to divide community property equally, if a dissolution decree "results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred" and the court has therefore committed reversible error. *In re Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007), *review denied* 163 Wn.2d 1055 (2008); *see also In*

*re Urbana v. Urbana*, 147 Wn. App. at 10; *In re Marriage of Pea*, 17 Wn. App. 728, 731, 566 P.2d 212 (1977).

A trial court's division of property in a decree of dissolution is reviewed for a manifest abuse of discretion. *Buchanan v. Buchanan*, 150 Wn. App. 730, 753, 207 P.3d 478 (2009). A trial court abuses its discretion if its decision is manifestly unreasonable, meaning that its decision is outside the range of acceptable choices, or is based upon untenable grounds. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). This Court reviews the trial court's factual findings for substantial evidence, which is evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008). On review, this Court considers whether the property division is fair and equitable based on all the facts and circumstances. *Stachofsky v. Stachofsky*, 90 Wn. App. 135, 147, 951 P.2d 346 (1998), *review denied*, 136 Wn.2d 1010 (1998).

**C. The trial court improperly relied on an exhibit admitted solely for illustrative purposes. AB 41-43.**

14. The "spreadsheet" (Trial Exhibit 40) was recommended by Respondent's attorney, not the trial court. RP 100-101 of "Trial Excerpts". This was another way for Respondent's council to misrepresent the assets and debts as well as confuse the trial court. The trial court determined it to be used only for illustrative purposes at both time of trial in September of 2012, Id and again at time of presentation in February of 2013. RP 22 of 2-14-2013. Not all of the information contained in this exhibit was supported by either testimony or exhibits admitted into evidence. AB 41-43. Exhibits used for illustrative purposes do not constitute substantive evidence. *Cf In re Woods*, 154 Wn.2d 400, 427, 114 P. 3d 607 (2005); *State v. Lord*, 117 Wn.2d 829, 855-856, 822 P.2d 177, 193-194 (1991). Id. The spreadsheet contains several

entries for which there is no substantive evidence in the record to support them. AB 41-43.

The record in this case belies the Respondent's fundamental misrepresentation of what findings were made in his brief. He says his attorney completed the Facts of Findings based on the transcripts Applicant provided on January 31, 2013. She provided the oral ruling on 9-27-2012 RP 137-159 and a transcript of the conference call on 10-11-2012 RP 1-17. Applicant initially did so in an attempt to have him fix his mistakes prior to presentation. Instead of acknowledging the incorrect past due support and the mortgage reimbursement he was not allowed to take, Respondent and his council used it to complete the F&F's not filed until the day of presentation. In doing so listed numerous items that were never part of the record or found anywhere in the transcripts. It was not until 2-14-2013 that Respondent provided the Facts and Findings however the trial court failed to acknowledge when Appellant expressed concern she was seeing Respondent's final documents for the first time. RP 7 of 2-14-2012:

Respondent cites to FF 2.21: 59 however this was not part of the F&F until Respondent entered the final docs on June 6, 2013. It is not in the F&F submitted on 2-14-2013 CP 676-86. It was never approved that the spreadsheet be offered as part of the record. AB 41-43, RP 100-101 of "trial excerpts" and RP 22 of 2-14-2013.

The trial court erred in entering Amended Decree of Dissolution relying on the corresponding spreadsheet distributing the home proceeds. The spreadsheet (chart) is what was used by Respondent's attorney at time of presentation to explain to the trial court all assets and liabilities of the parties. AB 43. With there being no evidence to support these findings of fact and with Appellant having been substantially

prejudiced by them, the decision is manifestly unreasonable and should be reversed. Id.

**D. The trial court erred in entering its Order in April 2013 on Motion for Reconsideration. AP 44.**

15. The trial court did correct the miscalculation of support arrears (RB 26) however refused to acknowledge its mathematical error in the mortgage reimbursement Respondent was never allowed to take. AB 31-33. The trial court erred in only correcting by \$26,011 versus the \$33,798. Id. The trial court further erred and abused its discretion when refusing the address the other errors made in Respondent's income, the difference of the 401k liquidated by Respondent, the exaggerated value of the studio equipment, unpaid transitional maintenance along with other evidence produced as to mistakes made offered during the reconsideration process. CP 728-30, 731-48, 755-64, 765-835. 925-26.

**E. The trial court abused its discretion in entering the June 6<sup>th</sup>, 2013 Judgment, approving Attorney Fees and Citibank interest. AP 44-46.**

16. As mentioned above in this brief on number 12, the Citibank award to Respondent was never ordered by the trial court. There was no evidence to support a finding that the appellant was responsible for this debt. It is no were in the record that the trial court ever ordered this. It was never part of the oral ruling on 9-27-2012 RP 148-159 and was never mentioned in the conference call on 10-11-2012 RP 3-17.

When Respondent submitted documentation that accounted for all transactions made on the Citibank credit card it only further illustrated his careless and frivolous

spending during the time he was not paying his ordered obligations and while the Appellant struggled to make ends meet. CP 1196-1203, 1204-5, 2234-2281. Appellant filed her reply as CP 1209-1336. The statements provided only should have proved that the only reason interest was owed was because he had used it. CP 1366-1457. The trial court abused its discretion in making its determination. CP 1350-52 Respondent incorrectly refers to the record as CP 1939 (sic) which is only the final letter of distribution he drafted. Not only was it an error to award \$12,000 of his credit card paid from Appellant's share of the proceeds the trial court added insult to injury when it abused its discretion to award him an additional \$2,660 in interest to be taken from Appellant's share. AB 46.

As was well illustrated in Appellant's Opening brief the trial court abused its discretion when it awarded Dan attorney fees of \$3,850 to clarify between a Supplemental and Amended Decree. AB 44-46. Appellant asks this court to reverse both the interest of \$2,660 and attorney fees awarded of \$3,850.

**F. The trial court erred in when it approved and entered Dan's Amended Decree of Dissolution. AB 47.**

17. Respondent is incorrect and does not offer evidence that "*Both parties agreed...*" The Letter of Distribution was submitted by Respondent and he merely cites to the letter filed. CP 1939.

**G. The trial court abused discretion in approving Order to Enforce Letter of distribution Request for additional Attorney Fees \$4,410. AB 48.**

18. Respondent wants to divert this Court's attention from the reality of the record when he accuses Appellant of willfully disregarding court deadlines and that is why she

was unable to offer witnesses and exhibits at time of trial. RB 14. In August 2012 Respondent filed a motion using carefully edited emails to assert Appellant was ignoring her court deadlines. CP 1977-95. Respondent states he *“did file a motion to deny Pam the ability to submit lists of witnesses & exhibits based on her willful and knowledgeable disregard for court deadlines... CP 621-626.”* RB 14. Respondent is distorting the record. Appellant had every reason to believe Respondent was no longer working with Mr. Pierce and had no intentions on going to trial; otherwise Appellant would have complied with all trial deadlines. CP 1977-95.

Appellant’s history of sanctions and attorney fees being awarded against her are the following:

- In August of 2012 the court found Appellant ignored court deadlines based on Respondent’s motion using carefully edited emails. CP 571-580, 581-587, 612-20, 621-26, 627-633, 634-37, 1977-95.
- In February 2013 Appellant refused to sign the original letter of Distribution giving Respondent a \$33,798 credit on mortgage payments (never approved by the trial court RP 17 10-11-2012) and only reimbursing Appellant for \$8,250 of past due undifferentiated support when he owed \$21,740 and an additional \$10,500 for future maintenance. The trial court initially denied Appellant’s Stay. CP 836-37. Two months later it ordered the back support of \$21,740 and reversed \$26,010 of the \$33,984 mortgage payments. CP 925-26.

Respondent’s attorney did accuse Appellant of having a history of sanctions. The trial court merely signed his order word for word even though neither the Respondent nor the trial court offered evidence to back up the claim. CP 1934-39. The trial court

abused its discretion in awarding \$4,410 to Respondent and Appellant is asking this court to reverse the judgment.

**H. The trial court abused its discretion awarding additional Attorney Fees of \$2,500. AB 49.**

19. The Respondent's Brief is remarkably silent on what was a 2012 judgment satisfied at escrow. CP 672-73, 1940-41, AB 49. The reason the \$2,500 judgment originated is best explained in CP 1977-95. The trial court abused its discretion in awarding \$2,500 to Respondent and Appellant is asking this court to reverse the judgment.

**I. Appellant is entitled to an award of attorney fees and costs on appeal. AB 49.**

20. The Respondent failed to respond or counter Appellant's argument on attorney's fees in any way. This lack of opposition is tantamount to an admission that the appellant's argument is correct. See also RAP 18.1(b). Accordingly, the failure to respond to Appellant's argument provides an additional basis for reversing the award of fees awarded to him and an award of attorney fees and costs on appeal (AB 49-50). In light of the multiple reversible errors by the trial court, the significantly disparate financial circumstances of the parties, and the substantial resources available to Respondent but not Appellant, this court should exercise its discretion under RCW 26.09.140 and award reasonable attorney's fees and costs on appeal to Appellant. Pursuant to RAP 18.1(c),

## CONCLUSION

The issues presented in this appeal are the trial court's findings and the lack of support in the record. Appellant is entitled to object to findings that do not have such support irrespective of whether she presented evidence relating to them or not. The trial court's findings were not supported by the evidence contained in the record. Respondent attempts to provide citations to the record in support of various findings to which Appellant has pointed as having no support.

The trial court made allocations without regard for the impact it had on the relative financial situations in which the parties were left. It also appears to have not been considered at all when the trial court was examining the basis for its award. Nothing in the Respondent's brief should dissuade this Court from concluding that the trial court erred in dismissing the Appellant's objections raised during reconsideration. . Several of the arguments advanced by the Respondent do not support the trial court's ruling, but rather allow the problems therein to be more easily seen. As outlined in Appellant's Opening Brief, the trial court erred in several ways, its ruling should be reversed, and Appellant should be awarded fees on appeal.

DATED at Seattle, Washington this 16<sup>th</sup> day of June, 2014.



PAMELA MOORE, Pro Se

Petitioner/ Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that on June 16<sup>th</sup>, 2014, I served by email one copy of the foregoing document on the following:

DANIEL H. MOORE, Respondent

918 North 67<sup>th</sup> Street

Seattle, WA 98103

Danmoore1969@live.com

A handwritten signature in cursive script, reading "Pamela K. Moore", is written over a horizontal line.

Pamela K. Moore

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