

No. 74405-4-I

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

In re the Marriage of

HILLERY LORE NYE LEE
Appellant

and

RALPH BRYAN LEE
Respondent

FILED
Jun 13, 2016
Court of Appeals
Division I
State of Washington

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

This appeal concerns dissolution of a short-term second marriage for both parties; their children are not involved. Though both parties entered the marriage in a condition of financial solvency, six years later they were deep in debt and scrambling to make essential periodic payments. The husband (Lee), having quit his job at Microsoft shortly before the marriage, remained largely unemployed for most of the marriage and the wife's (Nye's) law practice income was insufficient to sustain the parties' lifestyle, particularly as she suffered a period of disability. At the conclusion of trial, the court observed both parties had the skills to get back on their feet financially and that the distribution would be as near equal as possible. Between then and the court's final distribution, the wife filed for bankruptcy to protect her residence from foreclosure. The bankruptcy was dismissed after the amount of claims disqualified her from Chapter 13. The court expressed considerable dismay over the filing and ended up distributing the property in a grossly disproportionate way, with the husband up by \$400,000 and the wife down by \$300,000. The court failed to consider the statutory factors or enter findings of fact to explain its ruling. Finally, numerous legal and arithmetical errors pervade the outcome, requiring remand for a

supplemental evidentiary proceeding and correction of the numerous errors and for compliance with state law.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it failed to explain its findings, its conclusions of law, or its distribution, which awarded to the husband a disproportionate share of the assets; in particular, the court failed to consider on the record the statutory factors of RCW 26.09.080.

2. The trial court erred when it failed to enter adequate findings of fact and conclusions of law, including failing to find the distribution was just and equitable, which it is not.

3. The trial court erred when it distributed the property disproportionately, leaving the husband with nearly \$400,000 in value and the wife with nearly \$300,000 in debt, a result that is neither just nor equitable, nor even comprehensible.

4. The trial court erred when it double counted nearly \$145,673 in its distribution scheme, increasing the award to the husband and the lien on the wife.

5. The trial court erred when it considered only the community property in its distribution analysis, in violation of the statute, which requires the court to consider all the property.

6. The trial court erred by characterizing certain items of property, including the following:

- characterizing as the husband's separate property the lot on Vashon contiguous to the wife's premarital residential property and purchased during the marriage from the wife's family by means of a family option, with funds that were not traced to separate property;

- characterizing as the husband's separate property the lease associated with the lot on Vashon, which is also inconsistent with characterizing the rents received as community property;

- characterizing as the wife's separate debt the balance owed on a home equity line of credit (HELOC) associated with the wife's premarital residential property, though the funds obtained by means of the HELOC were used to pay for community expenses;

- characterizing the wife's engagement ring as community property despite the undisputed evidence that it was a gift to the wife before marriage.

7. The court erred when it distributed the Vashon lot to the husband, having characterized it as his separate property, when the property is contiguous to the wife's residence, important to the upkeep of that residential lot, and sold to the couple so that it would remain in the wife's family.

8. The court erred when it distributed the engagement ring, which did not exist at the time of trial but had been exchanged by the wife for legal services.

9. The trial court erred when it denied the wife's request for a supplemental evidentiary hearing after both parties sought to introduce additional evidence post-trial.

10. The trial court erred when it relied on post-trial submissions by the husband, rejecting similar post-trial submission by the wife, and despite there being problems with the admissibility of the submissions, which led the court astray in numerous ways.

11. The trial court erred when, relying only on the husband's post-trial submissions, it entered values for the following properties: the Madrona house, the Madrona HELOC, the engagement ring, the wife's law practice, and miscellaneous debts to family and friends. In particular, the court rejected the wife's evidence that the Madrona house and associated debt were trending to solvency; accepted the husband's new evidence of an old insurance value of the engagement ring; accepted the husband's new evidence of increased value in the law practice; and omitted from the spreadsheet various post-separation debts on the basis that they were "not listed in bankruptcy."

12. The trial court erred when it entered the findings of fact and conclusions of law, including the spreadsheet, which reflects the errors enumerated above. CP 187-200 (attached as an appendix).

13. The trial court erred when it denied the motion for reconsideration and denied the wife's motion for a partial decree and supplemental hearing and erred when entered a factual finding regarding the engagement ring, to-wit:

The court finds that Petitioner misrepresented the value of the wedding ring and its 'sale' for an alleged \$21,000. The bankruptcy filing shows she gave it to the family law trial attorney in exchange for his legal services valued at over \$100,000.00. This court concludes that Petitioner misled this court or the bankruptcy court. In either situation, Petitioner's blatant dishonesty regarding the 'sale' of the ring is highly concerning.

CP 230, 182.

Issues Pertaining to Assignments of Error

1. Is the court required to consider on the record the factors mandated by statute and case law as bearing on the distribution of assets and liabilities on dissolution of a marriage?

2. Is the court required to enter adequate factual findings and conclusions of law and otherwise to explain the reasoning behind its distribution, so that the parties and this Court can assess whether the requirements of the law are met, particularly to consider the economic circumstances of the parties going forward from this short-term marriage?

3. Does the court's grossly disproportionate distribution violate the requirement that it be just and equitable?
4. Is the court prohibited from counting assets or liabilities twice in its distribution, thereby increasing the award to the husband and increasing the financial burden on the wife, in a way that seems punitive?
5. Did the court violate the statute by considering only the community property in its distribution analysis when the statute requires that the court consider all the property before it?
6. Did the court mischaracterize the Vashon lot and lease acquired during the marriage as community property where no tracing was done to overcome the presumption of community property?
7. Did the court mischaracterize the Vashon HELOC balance as separate debt when it was incurred for community purposes?
8. Did the court mischaracterize the engagement ring as community property?
9. Did the court improperly distribute the Vashon lot and lease to the husband when the lot is contiguous to the wife's residence and was purchased as part of a larger lot and plan for the property to remain in the wife's family.

10. Does it make any sense to award to one spouse property that puts him in the other spouse's backyard post-dissolution, when other alternatives exist?

11. Did the court improperly distribute an asset (the engagement ring) that no longer existed?

12. Did the court omit other assets and liabilities from the distribution?

13. When, after a bankruptcy-related stay, both parties sought to submit additional evidence and disputed various facts pertaining to the assets and debts before the court, should the court have granted the wife's motion for a supplemental evidentiary hearing to allow for proper consideration of evidence deemed admissible and relevant?

14. Was it wrong for the court, in lieu of a procedure with notice and opportunity to be heard on these evidentiary matters, to rely on the husband's submissions and to reject the wife's, especially as the husband's lacked even sworn certification?

15. Should the court remand for a supplemental evidentiary hearing and correction of these many errors, including the court's factually erroneous finding in the order on reconsideration regarding the engagement ring?

III. STATEMENT OF THE CASE¹

1) Introduction

Hillery Nye Lee (“Nye”) and Bryan Lee moved in together in 2006, were married in 2007, and have no children together. Both were previously married and both have children from their previous marriages. At the time of trial Lee’s children were aged 15, 19, 22, and 25, and resided primarily with their mother; Nye’s children were aged 13 and 16 and shared residences between their parents. RP 10, 31, Ex. 1.

Lee did not work during most of the marriage, while Nye earned income from her law practice. According to Lee, in 2008 they were worth close to \$4 million, much of it “unrealized gain” from his years at Microsoft. RP 57, Ex. 138. Two years later, the parties were insolvent and borrowing from Peter to pay Paul. When the parties filed for dissolution in 2013, their net worth was negative. Following a trial in 2015, the court ordered a distribution of the parties’ assets and liabilities that resulted in an award totaling \$373,089 for Lee and a negative \$293,924 for Nye.

¹ RP refers to the verbatim report of proceedings for February 4, 2015 through February 10, 2015. Citations to the verbatim report of proceedings for additional hearing dates will be indicated by date in the RP cite.

2) The parties owned two houses, each with a home equity line of credit (HELOC).

In August 2006, a year before they married, Nye and Lee moved in together into a house in the Madrona neighborhood of Seattle, Washington (“Madrona house”). RP 32. Lee had just purchased the house for \$1.87 million (putting down 20% and financing the rest on 5-7% adjustable rate mortgage), and both parties were on the title. RP 96-97. Nye already owned a home on Vashon Island, her childhood home, which she purchased from her mother around 2000. RP 182-83. Before marrying, both parties took out home equity lines of credit (HELOC) on the two homes: the Madrona House HELOC had a credit line of approximately \$190,000 and the Vashon HELOC had a credit line of \$100,000. RP 12, 184-85, Ex. 21, Ex. 235. The parties did not borrow any funds from these HELOCs until after marriage. RP 184-85, Ex. 234. There is no complete accounting of the funds withdrawn from the HELOCs, but testimony regarding where those funds were spent will be discussed further in the argument section.

3) Both parties were employed when they began cohabiting, but only Nye worked consistently during the marriage.

At the time they began cohabiting, Lee was employed as a CFO at Microsoft and Nye had her own law practice, MediaTech, with another lawyer. Lee’s salary at Microsoft was \$350-400,000 plus stock grants of

\$1.5-1.6 million per year. RP 44. Nye earned approximately \$150,000 annually. RP 152.

In April 2007, Lee left his job at Microsoft. RP 42. According to Lee, he left with a net worth of \$3 million (in real estate and “unrealized” investments). RP 43, 57-58. In July 2007, Lee and Nye married. RP 22. Lee remained unemployed and did not work at all during the marriage except for seven to eight months in 2011, and sporadically as a consultant, as noted below. RP 52.

4) During the marriage, the parties purchased a lot on Vashon contiguous to the Nye family home.

In November 2007, the parties purchased the lot adjacent to Nye’s Vashon home for \$55,000. RP 195. Both parties were on the title to the lot as joint tenants with a right of survivorship, and Nye paid all taxes and utilities on the lot throughout the marriage. RP 192, 259, Ex. 3. The Vashon home was Nye’s childhood home and Nye’s mother had purchased the adjacent lot (“Vashon lot”) when the previous owner died. RP 182-83, 190-91. Nye’s mother wanted all the Vashon property to stay in the family and gave Nye an exclusive option to purchase the Vashon lot. Ex. 111. The lot also provided a drain field and additional water share that would alleviate septic issues Nye was having with her Vashon house. RP 190, 211-212. Nye later negotiated an option to lease the Vashon lot with AT&T. RP 193; Ex. 208. All lease payments were made

directly into Nye's separate bank account and are reported to the IRS as Nye's income. RP 192-94.

5) Lee managed the couple's finances, which, in 2008, he reported as robust.

Lee managed the couple's finances, which they held in a number of joint and separate accounts. RP 154, 35, 481; see Ex. 138. The parties transferred funds between the accounts as needed to pay various expenses. RP 154, 36-37. In 2007, after the parties married, Lee set up a joint Ameritrade brokerage account and began investing in various stocks. RP 52-54. In 2007, the last year of Lee's employment, his total income was \$2.2 million and Nye's was \$181,000, according to the 2007 tax return. RP 50, Ex. 40.

In addition to mortgage payments on the two homes, the parties had numerous other expenses. The monthly mortgage payment on the Madrona house was approximately \$11,600, RP 101; the parties paid varying amounts on the Vashon mortgage for reasons that are unclear. See Ex. 248. Nye was also still paying student loans, which were paid in full in June 2008 by Lee. Ex. 257.

Under his 2006 dissolution decree from his previous marriage, Lee was obligated to pay family support in the amount of half his earned income for 15 years, with a \$1 million cap, and decreasing caps as each of the four children graduated college. RP 14 -18; Ex. 15. (Only salary and

wages – not investment income – were included in this calculation). Lee also paid other expenses for his children, such as half of college tuition and private school. RP 21-22, 80; see RP 172 (he paid \$5,000 toward college tuition with money set aside to pay taxes without telling Nye). In 2007, Lee paid \$180,000 in maintenance to his previous wife. RP 50.

In June 2008, Nye requested a financial statement for her law firm MediaTech's credit line to which Lee responded with an estimate of their net worth at \$3,875,000, reflecting a mix of real estate, Ameritrade investments, and law firm earnings. Ex. 138.

6) Beginning in late 2008, the parties' financial fortunes dramatically reversed.

In September 2008, Nye's practice, MediaTech, shut down in the wake of Nye bringing suit against her law partner to dissolve the partnership based on her partner's breach of fiduciary duties, embezzlement, and theft. RP 151-152, 239. Over the next two years (2008-2010), Nye incurred nearly \$500,000 in legal bills, including over \$300,000 in bills from the law firm of Davis Wright Tremaine (DWT). This effort resulted ultimately in a \$40,000 award in her favor, which she never recovered. RP 239-243, Ex. 185.

Meanwhile, Lee remained unemployed and his investments lost considerable value. He testified that by the end of 2008, they went from what he called "\$3 million in unrealized gain," to a "realized gain of

approximately 200,000.” RP 57. At the time, Nye was unaware of these developments. RP 235.

In 2009, the couple was unable to pay their 2008 taxes and asked the IRS for a payment plan. RP 64-65, Ex. 42.

Also in 2009, Nye started another firm, Madrona Law Group, for which purpose Lee transferred funds from his personal bank account. RP 293-295; Ex. 257.² Nye also borrowed from the Vashon HELOC to start up the firm. RP 235. Both of the law firms, MediaTech and Madrona Law Group, lost money in 2009 and the couple did not file a 2009 tax return because of negative income. RP 69-70; Ex. 116. Meanwhile, Lee, though unemployed, continued to pay substantial family support to his ex-wife.³ RP 29, 68 (approximately \$161,000 from July 2008- July 2009 or \$16,500/per month; reported paying \$68,000 to her in 2008 tax return); RP 19 (Lee testifies to paying her approximately \$190,000 in 2009); Ex. 1 (Lee admits that “despite my unemployment, I continued to pay Lisa more than I was required to pay under our agreement,” and that he “had to invade assets and go into debt in order to do this.”). Though there is no

² Nye requested \$10,000 for her firm and Lee said he would transfer \$25,000, which she could “redistribute from there,” i.e., apparently to put to other purposes. CP 257.

³ Lee testified that he may have done some consulting in 2009 or 2010, earning approximately \$50,000 for Ignition, but wasn’t sure, RP 69, 72; Lee’s 2011 Form 1099 shows \$50,000 earned for Ignition in 2011. Ex. 134, RP 75.

direct evidence of the source of these funds, the Madrona House HELOC was maxed out during this time frame.

In 2010, Nye's new firm, Madrona Law Group, generated a positive cash flow, from which the mortgages and other community expenses were paid. RP 112; Ex. 161 (funds transferred from Madrona Law Group account to joint account to pay mortgage).

That same year, when Nye requested an update on their overall financial spreadsheet, Lee revealed to Nye that they were out of money, describing them as "broke" and describing in particulars their cash flow challenges. RP 161; Ex. 141. Not only were all their accounts depleted, but they had also incurred debt (credit card, loans from friends), in order to pay their expenses, including Lee's family support payments to his ex-wife. RP 166.

After Lee's revelation, the couple went to counseling over financial issues. RP 166. They also borrowed additional funds from friends and family. RP 41. The couple also tapped out both HELOCs. RP 184, 186, 235.

By now, they were in considerable tax trouble. They had an outstanding unpaid 2008 tax bill for approximately \$39,000, Ex. 127. In 2010, Nye took out a Bank of America credit card to cover \$25,000 of this

tax debt. RP 64-67, 223-227;⁴ Ex. 110 (credit report showing Bank of America credit card opened in 2010 and outstanding balance of \$25,546).⁵ The 2008 tax bill was eventually paid off in 2012. Ex. 129. The IRS also placed a lien for nonpayment of 2010 taxes. Ex. 17.

7) In 2011, the couple's financial circumstances went from bad to worse.

In 2011, Nye's law practice continued to generate income. Ex. 124 (Nye's 2011 tax return). However, she was unable to pay \$22,000 in taxes for 2011 and incurred penalties resulting in a \$30,000 tax bill owing for 2011, and the IRS put her on a payment plan. Ex. 130, RP 156.

Lee took a job with Votocracy, a technology start-up, for whom Nye was consulting as outside IP (intellectual property) counsel. RP 163. However, Lee was asked to leave within the year, having earned approximately \$100,000. RP 163, Ex. 137. He also set up a consulting business, Bryan Lee Consulting, which earned approximately \$50,000 in 2011. RP 75, 77, Ex. 134. (Lee did not produce tax returns for the years post-separation or otherwise document his claims about income.)

Also in 2011, Lee incurred approximately \$9,000 in legal fees to Socius Law Group related to litigation with his ex-wife, who was seeking

⁴ Nye's testimony mistakenly refers to a 2010 tax bill, apparently because the notice of unpaid 2008 taxes was issued in 2010, see Ex. 127.

⁵ Effectively, the IRS debt became debt owed the Bank of America.

to relocate with his children. RP 24-25, 231, Ex. 163. In July 2011, he stopped making mortgage payments on the Madrona house and has made no payments since then. RP 104.

In 2012, Nye, the main breadwinner in the family, was the victim of a carjacking, after which she was unable to work for about nine months, having suffered post-traumatic stress disorder. RP 161. In the aftermath of the crime, the couple moved to Vashon where Nye felt safer, closer to family and friends. RP 108. Her income for the year was a net loss of \$3,000; Lee earned nothing and the couple did not file a 2012 tax return. RP 89-90, 92-93, 161.

8) The parties separated in August 2013.

In August 2013, the parties separated and Nye petitioned for dissolution. CP 1-4. During separation, Lee moved back to the Madrona house, where he lived (and continues to live), though he has not paid the mortgage since 2011. RP 109, 104. In 2014, he put the house on the market for a short sale and had an offer of \$1.2 million, but claimed a tax lien for unpaid 2011 taxes held up the sale. RP 105-106, 177-78, 333. Nye claimed there were ways around the tax lien in negotiating the house sale. RP 179-180.

In 2013 and 2014, Lee claims to have earned \$25,000 and \$50,000, respectively, for his consulting business, from which he paid his first ex-wife half. RP 89-90, 92-93.

Nye remained at her Vashon home and continued to pay taxes and utilities on the Vashon lot and receive rents from the lease. By 2014, Nye wasn't able to make her mortgage on the Vashon house, due to, among other things, hidden water heater leakage that required substantial costly repairs, and the Vashon house eventually fell into foreclosure. RP 156, 183-84. The IRS also put a lien on the house after she got behind on her 2011 tax payments under the IRS payment plan. RP 157.

The parties went to trial in February 2015. Additional facts regarding the evidence and trial proceedings will be provided in the argument section specific to assets and issues discussed therein.

Following trial, the court commented that both parties were “really really smart,” and “really really talented,” but “had just miserable luck, horrible luck.” RP 563. Recognizing that this was a very short term marriage, nobody was asking for maintenance, there were no children, and that both parties had the ability to become successful, the court expressed its intent to equally divide the couple's assets and liabilities: “I know you can go forward. Both of you will both become successful again. We have

to get through this boatload of debt. My goal is to try to divide this as equally as I can.” RP 565-566.

The court then issued to the parties preliminary spreadsheets dividing up the parties’ assets and liabilities, and a proposed judgment, and asked for the parties’ corrections. CP 127-130. The proposed order showed a judgment of \$72,857 owed by Nye to Lee. CP 130 (reimbursements to husband of \$56,494 for his portion of Madrona Law assets and \$16,363 for net AT&T lease payments received by wife post separation, although these distributions were also in the spreadsheet).

On March 13, 2015, more than a month after trial, as the parties and the court continued to work on the final orders, Nye filed for bankruptcy to save her Vashon house from foreclosure, CP 91, and the trial court proceedings were stayed. CP 83-84. When Nye’s attorney informed the court, the court expressed frustration with her, agreeing with Lee that “nothing surprises me about this,” 3/13/15 RP 59, and noting “I was reluctant to issue the spreadsheets ‘cause I was afraid of this, and this is exactly what she did.” 3/13/15 RP 59. The court then commented that “this was a classic move,” 3/13/15 RP 58-59, and told Lee, “I am so sorry for you.” RP 60.⁶

⁶ Lee claims that the day Nye filed for bankruptcy was the same day the trial court planned to issue its final orders. CP 253. The record does not support this claim, but shows, rather, that on that day (March 13, 2015) the court scheduled a telephone

Lee then filed a claim in the bankruptcy proceeding at the last minute for \$822,168, representing that he was owed this amount in the dissolution. CP 92, 111, 132. This claim disqualified Nye from Chapter 13 eligibility and, on September 21, 2015, the bankruptcy proceedings were voluntarily dismissed. CP 91, 132. (Nye explains that she chose not to convert to a different kind of bankruptcy because that would have put her house in jeopardy. CP 177.)

On September 28, 2015, Judge Spector's bailiff requested the parties submit their proposed orders to the court stating that "the record is closed and would have been ruled on except for the filing of the bankruptcy." CP 88. That same day Lee sent an email to Nye and to the court notifying them that he would be filing a motion asking the court to review and admit documents from the bankruptcy proceeding. CP 88-89. On October 1, 2015, Lee filed his motion, attached to which were numerous documents. CP 305-309; 252-304. The submission was not sworn. *See* ER 603 ("Before testifying, every witness shall be required to declare that the witness shall testify truthfully ...").

Nye objected and filed her own motion requesting a partial decree and a supplemental hearing to allow her to present new facts that had

conference call with Lee and Clare (Nye's attorney), but had not indicated it was going to issue its ruling at that time; the email sent by the bailiff simply stated that the court wanted to schedule a call with "both of you" (addressed to Clare and Lee) and said nothing about issuing orders at the time or the purpose of the call. CP 112.

emerged since trial, including those revealed during the bankruptcy proceedings. CP 85. She contended that these additional facts were relevant to the parties' assets and liabilities and showed material omissions and errors in the spreadsheets exchanged between the court and counsel during the month after the trial. CP 88-97. She submitted a revised proposed spreadsheet based on these new facts along with an explanation of her challenges to the court's preliminary spreadsheet and Lee's proposed spreadsheet. CP 153-161. Her specific challenges will be addressed in the argument section.

The trial court denied Nye's motion, but did not enter an order on Lee's motion. CP 76. The court then proceeded to issue its orders and final decree, in which the court relies substantially on the documents Lee proffered in his post-trial motion, though their admissibility was not determined and they were, on their face, not compliant with the Rules of Evidence. CP 193-200.

9) The court distributed the property very disproportionately and without explanation.

On October 20, 2015, the trial court issued its order and entered findings and conclusions. The court's findings included a list of the distribution of assets and liabilities to each party, and a spreadsheet. CP 193-200. The spreadsheet listed the value and characterization of each item, and calculated a transfer payment that included a "marital lien" and

reimbursements “outside the division of community property.” CP 197-200. The findings do not include an analysis of the statutory factors, nor can such an analysis be found in the verbatim report of proceedings, apart from the preliminary comments made immediately after trial. The distribution is summarized below, while facts related to valuation and characterization are reserved to the argument section, to spare repetition.

In its distribution decision, the court first totaled the property characterized as community, ending with a community negative net of \$354,709. See Appendix. The court divided that number by two for two 50% shares of -\$177,355 each. Then the court balanced the difference and arrived at a “marital lien” owing from Nye to Lee of \$101,246. CP 198-199.

Then the court awarded separate property to the parties totaling for Lee \$126,171 (mainly reflecting the Vashon Lot & AT&T Lease) and for Nye -\$47,006. CP 198. To this point, the order awards Lee \$227,417 and leaves Nye with substantial debt (-\$148,252).

Next, the court ordered Nye to pay Lee an additional \$145,673 in “reimbursements owed party-to-party outside the division of community property” reflecting (1) half the value of the Madrona Law Group, characterized as community property and already included in the spreadsheet total described above; (2) the AT&T lease payments since

separation, characterized as community property and also already included in the spreadsheet total described above, plus an additional \$10,200 “for six months between original intended order date and now,” but without dividing them 50/50 as with pre-trial payments;⁷ and (3) half the value of Nye’s engagement ring characterized as community property and also already included in the spreadsheet total described above. CP 199. Thus, the court’s calculation exactly double counts the \$66,035, \$53,075, and \$11,994, for the community interest in Madrona Law, engagement ring, and Vashon lease payments, and then adds the \$10,200 additional post-trial lease receipts, but does not deduct for taxes, utilities, or insurance and does not split this net amount in half, as it had with the rents in the spreadsheet (i.e., \$10,200 = \$1700/month x six months from trial to end of bankruptcy stay).⁸ The result is that Lee receives \$126,171 net in purported separate property, plus a payment from Nye of \$246,918, for a total of \$373,089, while Nye receives a negative \$293,924. CP 198-199.

⁷ As will be discussed further below, the Vashon residence, purchased six years before the marriage, was characterized as Nye’s separate property, along with the HELOC outstanding balance attached to it. However, the court characterized the adjacent lot and the lease, both acquired during the marriage, as Lee’s separate property, but then characterized the rents as community property.

⁸ The court came up with this number from Lee’s post-trial submission. CP 259 .

Nye moved for reconsideration of the court's order, challenging the distribution, characterization, and valuation in various respects, which the court denied. CP 201-212.⁹ Nye timely appealed. CP 231-251

IV. ARGUMENT

A. THE STANDARD OF REVIEW.

Generally, this court reviews a trial court's decision on property distribution, characterization, and valuation in a marital dissolution for an abuse of discretion. *Marriage of Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007). However, this standard contemplates the trial court has made findings adequate for review, which the trial court here did not do. CP 187-200. *See* CR 52(a)(1) (“[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law.”). Indeed, the record in its entirety fails to demonstrate the trial court's consideration of the mandatory factors, including, importantly, the requirement that the distribution be “just and equitable.” RCW 29.09.080¹⁰; *Rockwell*, 141

⁹ As will be further discussed below, the court, in reliance on Lee's post-trial pleadings, accuses Nye of misrepresenting the value of her engagement ring, which Lee conceded as her separate property and which she used to pay her trial attorney. CP 230.

¹⁰ RCW 26.09.080 provides:

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent

Wn. App. at 242 (statute requires consideration of the factors). Nowhere does the court consider what has been described as the “paramount concern” in this task: the post-dissolution economic position of the parties. *Marriage of Terry*, 79 Wn. App. 866, 871, 905 P.2d 935 (1995); *see, also*, RCW 29.09.080(4) (court must consider economic circumstances of the parties). Alone, the failure to perform this mandatory analysis requires reversal. *Marriage of Steadman*, 63 Wn. App. 523, 526-528, 821 P.2d 59 (1991).

The requirement for findings also helps ensure that the court consider the relevant facts in reaching a decision. *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 424, 154 P.3d 243 (2007). Without adequate findings of fact and conclusions of law, this Court cannot meaningfully review the court’s decision. *See, e.g., Lawrence v. Lawrence*, 105 Wn. App. 683, 20 P.3d 972 (2001) (child custody determination). Here, given what the record reveals, mostly undisputed in

domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at

the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

its central issues, the trial court's order is especially difficult to comprehend. Without explanation, and faced with a barely solvent short-term marriage, the trial court distributed what assets remained in a manner grossly favoring the husband and burdening the wife. In doing so, the court abused its discretion. *Rockwell*, 141 Wn. App. at 243 (“If the decree results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred.”) (internal citation omitted). Not only does the court fail to find this result to be “just and equitable”; it is neither just nor equitable. Rather, it is deeply and repeatedly flawed, as itemized below.

B. THE TRIAL COURT'S DISTRIBUTION IS FLAWED ARITHMETICALLY, ENHANCING THE INEQUITY OF THE DISTRIBUTION.

Apart from the fact that no justification appears for the grossly disproportionate distribution accomplished here by the court, the inequity of it is multiplied by the court's arithmetical error, specifically, double-counting three of the assets and thereby increasing the lien Nye owes Lee by \$145,673. See CP 161 (Nye arguing same in post-trial pleading). This violates the court's duty to “calculate the assets fairly” and requires correction. *Mansour v. Mansour*, 126 Wn. App. 1, 14-15 106 P.3d 768 (2004) (reversal to correct for apparent double-counting). Accordingly, even apart from the additional errors described below, this Court should

remand with instructions to deduct \$145,673 from the order for those assets already included in the spreadsheet. See ¶ III(9), above (detailing the double counting in reimbursements for the Madrona Law Group, the engagement ring, and the Vashon lot rents).

C. THE TRIAL COURT DID NOT CORRECTLY CONSIDER THE COMMUNITY AND SEPARATE PROPERTY TOGETHER, AND IMPROPERLY ALLOWED CHARACTERIZATION TO CONTROL DISTRIBUTION.

Similarly, in making its distribution, the court appears not to have considered the community and separate property together as required by the statute. Rather, the court segregated the community and separate property in a way that only exaggerated the effects of the characterization errors made by the court, discussed below.

In ordering a just and equitable distribution under RCW 26.09.080, the trial court must consider both (1) the nature and extent of the community property and (2) the nature and extent of the separate property, in addition to all other relevant factors. Thus, all property, whether community or separate, is before the court for distribution. *Farmer v. Farmer*, 172 Wn.2d 616, 625, 259 P.3d 246 (2011); *Konzen v. Konzen*, 103 Wn.2d 470, 477, 693 P.2d 97 (1985) (recognizing that statutory criteria specifically applies to separate property). Indeed, the trial court may award one spouse's separate property to the other spouse if necessary "to achieve a just result." *Marriage of Larson and Calhoun*, 178 Wn.

App. 133, 313 P.3d 1228 (2013). Accordingly, while the character of the property is a relevant factor that must be considered, it is not controlling for purposes of distribution. *Konzen*, 103 Wn.2d at 478 (1985).

Here, it appears the court did not understand that it could distribute both community and separate property and needed to consider them altogether. While this was perhaps due to a mistaken understanding that characterization controls distribution, the court's failure to consider all separate and community property together for distribution was a violation of the statute and therefore error.

D. THE COURT MADE ERRORS IN CHARACTERIZATION WITH CONSEQUENCES TO THE DISTRIBUTION.

Generally, a court's characterization of property as separate or community is a question of law reviewed de novo. *Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002). Property acquires its character upon acquisition. *Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). Separate property retains its character only if traceable and identifiable. *Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003).¹¹ An error in characterization requires reversal where it appears

¹¹ By contrast, commingling occurs when:

(1) a substantial amount of separate property is (2) intermixed with (3) a substantial amount of community property to the extent that (4) it is no longer possible to identify whether the remainder is the separate property portion or the community property portion. When commingling has occurred, all of the asset

the characterization affected the distribution. *Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P2d 8 (1989). Here, the court mischaracterized some of the assets, and distributed the assets according to characterization, errors that substantially prejudiced Nye.

1) Characterization of the real estate and related assets and liabilities.

The parties owned two residences at the time of marriage and dissolution. Lee purchased the Madrona house in 2006 for the couple to move into together; Nye's name is on the title. RP 96-97. They took occupancy in August 2006 and married in July 2007. RP 32, 22. Lee also took out a HELOC on the Madrona house, before marriage, which was depleted during the marriage. Ex. 234. The court characterized both as community property. CP 197; RP 549. However, the court characterized all the contents of the Madrona house as Lee's separate property. CP 197.¹² If nothing else, these characterizations are inconsistent, but what

becomes community property, and any asset acquired from the commingled asset is community property.

In re Marriage of Shui and Rose, 132 Wn. App. 568, 125 P.3d 180 (2005), citing 19 Kenneth W. Weber, *Washington Practice: Family and Community Property Law* § 11.13, at 159-60.

¹² Preliminarily, the court characterized the contents (furniture, including pianos, and improvements as community property. RP 551-552; see, also, CP 160 (Nye pointing out this error in exchange of draft findings). Lee claimed at trial that the two pianos came with the house and that he fully furnished the house within the first 12-18 months of purchase (during the period the parties cohabited and overlapping approximately six months with their marriage). RP 124-125. He declared the contents were "all bought by me." RP 126. However, he did not document the source of the funds.

they accomplish is to increase the community debt by \$200,894 (the balance due on the HELOC, the house itself being valued by the court at zero) and increase Lee's separate property award by \$15,000 (for the house contents, including the two pianos). CP 197. Put another way, Nye is "awarded" half the Madrona House HELOC debt and none of the value for the contents.

In 2000, Nye purchased the Vashon residence, where she had grown up, from her mother. RP 182-183. During the marriage, the mortgage, taxes, and insurance were paid from a variety of the couple's accounts. See e.g., RP 305 (Lee transferred funds from accounts he controlled to pay the mortgage). The court characterized the Vashon residence as Nye's separate property. CP 197.

Nye took out a HELOC on the Vashon residence right before her marriage to Lee, in 2007, and borrowed against it during the marriage for various expenses: to start a new law firm, to pay legal fees in the MediaTech litigation, and to pay debts to Lee's family. RP 184, 186, 235; Ex. 21. By 2010, the HELOC was maxed out; its balance was at \$100,000 owed. RP 235. The court determined the HELOC to be separate property because the Vashon house was separate property. RP 544-545; CP 197. Thus, this debt was awarded solely to Nye. This is error. "Money borrowed by either spouse during marriage is presumed to be community

in nature, regardless of the character of the property pledged as security.”

In re Marriage of Hurd, 69 Wn. App. 38, 54, 848 P.2d 1985 (1993) (citing *Finley v. Finley*, 47 Wn.2d 307, 312-13, 287 P.2d 475 (1955)); see also *National Bank of Commerce v. Green*, 1 Wn. App. 713, 719, 463 P.2d 187 (1969)(“even a community debt may be secured by separate property.”).

Whether a debt obligation is separate or community in nature is determined by the purpose for which the note was executed. If the money is borrowed for a community purpose, then the debt is community; if the money is borrowed for a separate purpose, then the debt is separate. *Hurd*, 69 Wn. App. at 54-55; *National Bank of Commerce*, 1 Wn. App. at 717-19. Borrowing money to pay off a community debt is for a community purpose. *National Bank of Commerce*, 1 Wn. App. at 717. Here, as described above, the HELOC was used to pay community debt incurred during the marriage, and should have been characterized as community debt. RP 184, 186, 235.

During the marriage, Nye and Lee purchased the lot adjacent to the lot containing Nye’s Vashon house. This lot had once been part of a larger lot encompassing the Nye family residence, which Nye’s family purchased when the two lots were subdivided. RP 190. Eventually, after the owner of the smaller lot died, Nye’s mother purchased it. RP 190-191. In 2004, because her mother wanted the lot to stay in the family, as part of

the larger parcel already owned by Nye, she gave Nye an exclusive option to purchase the smaller lot. RP 192; Ex. 111.

In November 2007, Nye and Lee exercised the option and purchased the smaller lot. RP 190; see, e.g., Ex. 206 (Lee to Nye's mother: "Hillery and I would like to buy [the lot] from you").¹³ See also RP 123 (Lee testified that he understood the family's hope that the lot would be reunited with the Vashon house property, and that he provided the funds to make that happen). The parties took title to the lot as joint tenants with right of survivorship. RP 120-121, Ex. 3.

Subsequently, Nye negotiated a lease with AT&T for the purpose of installing cellular towers. RP 121, 193, Ex. 208 (2010 option and lease agreement), Ex. 20 (2012 memorandum of lease reinstating 2010 option and lease agreement). AT&T paid directly to Nye \$1500 monthly on this lease. Ex. 208, Ex. 20. Nye paid the taxes and utilities on the property, as well as on her own residence. RP 258-260, See Ex. 157, Ex. 126.¹⁴

¹³ Ex. 206 also contains Lee's May 2007 emails to Nye's mother confirming "we're still moving forward on buying Frankie's store," that "we will simply provide you a cashier's check or wire transfer," and making sure Hillery has input on condition of the property ("I think the boat is the only thing [that needs to be removed], but let's make sure Hill doesn't have anything to add."). Also in Ex. 206 is Nye's May 2007 email to her mother and Lee stating: "It's amazing to me that the Vashon house will reunite with its little corner lot," and "I am delighted that there is a time, now, when we are able to write a check and have a contract on a napkin. Thank you Bryan for loving Vashon as much as me. . . . There is a legacy here for our friends... for our ever expanding family."

¹⁴ In post-trial submissions from the bankruptcy proceeding, Nye testified the rents were used to pay community creditors. CP 158.

During the marriage, a basketball court was constructed on the lot for Nye's sons to use. RP 191, 194, 211. The lot also had easements on the Vashon house property (e.g., around the Vashon house driveway for vehicle access to the property, and for utility lines associated with the cell towers). RP 193-94, Ex. 18.

At trial, Lee argued the lot was his separate property, claiming that he purchased the lot with his separate funds and that the rents on the AT&T lease were a gift from him to the community. RP 123, 530. (Notably, Nye paid the taxes and insurance on the lot.) To support his separate property claim, Lee produced at the last minute a copy of a bank withdrawal slip in the amount of the purchase price drawn on his separate account. RP 354, Ex. 261. But he did not produce any check made payable to Nye's mother. Nor did Lee produce any evidence about the source of funds in the separate account from which he made the withdrawal. Nye also had sufficient funds available at the time to make the purchase (e.g., the \$100,000 HELOC, then untapped). RP 192-193. In other testimony, Lee conceded the parties, meaning principally him as money manager, moved funds back and forth between separate and joint accounts. RP 36-37.

Nevertheless, the court characterized the Vashon lot and lease as Lee's separate property, and characterized the post-separation rents

received as community property. CP 197. This is an error because both were acquired during the marriage and presumptively community property. *Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995). Indeed, “[t]he law favors characterization of property as community property unless there is no question of its separate character.” *Marriage of Mueller*, 140 Wn. App. 498, 504, 167 P.3d 568 (2007) (emphasis added). “A spouse may overcome this heavy presumption with clear and convincing evidence of the property’s separate character.” 140 Wn. App. at 504.

Here, the evidence was inadequate under even a more lenient standard; certainly there is no indication the court applied the higher burden of proof to Lee’s evidence. For example, the community property presumption is not rebutted by the withdrawal slip produced by Lee, which reveals nothing about where the money in the account came from or where it went. Even if the source of these funds was an account held in Lee’s name, that is not sufficient to establish a separate property source. *Mueller, Id.* Indeed, the evidence, including from Lee himself, was that the money flowed back and forth between the parties’ many accounts without regard to individual ownership. RP 36-37; see also RP 154 (Nye’s testimony that they had a “fluid” approach to managing their funds, moving money back and forth between the accounts). Moreover, the

parties took title to the lot as joint tenants with right of survivorship, apparently for estate-planning purposes. Ex. 3; RCW 64.28.040.

In addition to titling the property as they did, the full context surrounding the property supports the presumption this was a community effort. The option to purchase was Nye's separate property; she paid the taxes, utilities, and insurance on the property; she and her family shared an intent to keep the property in the family, an intention Lee expressly endorsed; and the parties put the rents to community purposes, such as paying expenses. RP 422 ("Up until separation, [rents] went into the pot"), RP 260 (rent payments "were just used for living"). Altogether, the evidence strongly preponderates against Lee's separate property assertion, let alone sufficing to carry his "heavy burden" of rebutting the community property presumption.

Unlike Lee's evidence, a proper tracing "entails the use of records, documents, and testimony to show the source of funds and their expenditure." Horenstein, 19 *Wash. Pract., Family and Community Property Law* § 11.14. Here, the withdrawal slip does not establish the character of the funds (or even where they were applied). Added to the overall picture painted by both parties' testimony, that they simply did not keep track of their finances, separate or otherwise, the court simply had no

basis upon which to find the community property presumption rebutted by clear and convincing evidence.

This error produces multiple effects. It skews the court's distribution because the court takes the separate property out of its initial calculation of what gets divided 50/50 (i.e., only the community property) and awards to each party what the court characterizes as separate. CP 197-199. Thus, if the Vashon lot and lease were characterized as community, as they should have been, the community property total goes from -\$354,709 to -\$146,709, with obvious effects to the "marital lien" in favor of Lee. And, significantly, from Nye's perspective, the characterization error, and the apparently automatic award by the court of separate property to its owner, means that Lee receives a piece of property purchased only because Nye's mother meant to keep it in her family, adjacent to Nye's own home, which Nye made profitable through her own efforts and for which she has paid expenses. RP 259. And, of course, it puts one ex-spouse in the backyard of the other, an undesirable outcome from the perspective that dissolution should separate the parties so they can move forward independent of one another. From any angle, this is a bizarre outcome.

2) The court mischaracterized Nye's engagement ring.

Before they married, Lee gave to Nye an engagement ring. RP 275. At trial, he testified he was “not asserting it's anything other than a gift.” RP 328. He also said, “I am not claiming I own the ring.” RP 532. The court characterized the ring as community property. CP 198. Plainly, this is error. The ring was a gift to Nye from Lee before marriage and, as such, her separate property. *See Spinnell v. Quigley*, 56 Wn. App. 799, 801, 785 P.2d 1149, 1150 (1990) (gift becomes absolute when marriage occurs). Even rings purchased with community funds during marriage for the purpose of making a gift from one spouse to another may be deemed the separate property of the recipient. *See Johnson v. Dar Denne*, 161 Wash. 496, 296 P. 1105 (1931). In any case, Lee conceded the ring was Nye's separate property. See, also, CP 160 (Nye arguing same in post-trial pleading). The court's finding and conclusion to the contrary defies the evidence and the law.

Again, this ruling is consequential because the court adds the ring's value to the community property “bucket,” and awards half the ring's value (\$53,075) to Lee.¹⁵

¹⁵ The court's valuation of the ring is also contested, as discussed in the next section.

3) Summary Regarding Characterization Errors.

The court did not explain its distribution, but on its face, the distribution follows characterization. Everything characterized as community is divided in half (even Nye's engagement ring) and everything characterized as separate is awarded to its owner. By this means, Nye ended up owing Lee \$101,246¹⁶ for community property and was awarded separate debt of \$47,006. Lee was awarded as separate property the only assets in the black: a total of \$126,171. Because the characterization errors appear to drive this distribution, reversal is required.

E. THE TRIAL COURT RELIED ON IMPROPER EVIDENCE POST-TRIAL AFFECTING VALUATION, AMONG OTHER THINGS.

A great many of the assets and liabilities were undisputed as to value, including most of the real property and associated debt.¹⁷ However, as to other items, disputes arose at trial and some arose after trial based on contested evidence submitted by both parties.

By way of background, as described briefly above, Nye filed for bankruptcy a month after trial in early March, which automatically stayed the proceeding in superior court. She was attempting to avoid foreclosure

¹⁶ Not including the double counted reimbursements.

¹⁷ The parties agreed to values on the Madrona HELOC, Vashon residence, Vashon HELOC, Vashon lot, Vashon AT&T lease.

on her Vashon residence. Lee filed an eleventh hour claim in the bankruptcy proceeding at an amount that disqualified Nye for Chapter 13 (\$822,168 attributable to what he claimed was owed to him at dissolution, even though the dissolution was still pending and there was no judgment or ruling issued), forcing dismissal of her bankruptcy proceeding. CP 91, 111, 132.

Immediately afterward, on October 1, 2015, Lee filed a motion to admit documents from the bankruptcy proceedings and a declaration to which he attached numerous documents. CP 305-309, 252-304 . The submission did not comply with ER 603, a requirement of oath or affirmation that serves to “awaken the witness’ conscience and impress the witness’ mind with the duty [to testify truthfully].” Nye objected on that basis. CP 172-73.

The next day, Nye filed a motion for partial decree and to supplement the record. CP 85, 86-87, 88-161.

The court denied Nye’s motion. CP 182. The court never ruled on Lee’s motion or Nye’s objection. However, the court relied on various assertions Lee made in his motion and declaration, as well as on documents he appended, as discussed below. Nye contested numerous of his assertions. CP 173-180.

On remand, out of simple fairness, the court should hold a hearing at which these factual disputes are properly resolved upon admissible evidence. Several of the most consequential of these disputes are discussed below. But, preliminarily, it should be noted that the court appeared to be prejudiced against Nye by the bankruptcy filing and by Lee's accusations, which the court seemed to take at face value, in particular as concerns the engagement ring. In particular, the court makes serious mistakes about the facts with an impact on the court's view of Nye's credibility.

1) The engagement ring.

First, the evidence makes clear the engagement ring did not exist at the time the court distributed the property. Thus, it was error for the court to even distribute it, since a court cannot distribute an asset that no longer exists. *Marriage of Kaseburg*, 126 Wn. App. 546, 561, 103 P.3d 1278 (2005); *see, also, Marriage of White*, 105 Wn. App. 545, 551, 20 P.3d 481 (2001).

Moreover, the evidence does not support the value the court assigned. Lee testified he purchased an engagement ring for Nye for \$75,000. RP 393; Ex.243 (shows total of \$75,022 after discount). Nye testified she sold the ring for \$21,000 to pay her legal fees related to the dissolution. RP 484. In its preliminary ruling, the court indicated the

ring's value lay somewhere in between. RP 553. However, the final order values the ring at \$106,150 (CP 198), a figure derived, apparently, from Lee's post-trial declaration in which he refers to a purported appraisal (in a largely illegible form, with the value unreadable and the date appearing to be sometime during the 2000s, purportedly generated for insurance purposes). CP 290.¹⁸ This evidence cannot support the value for countless reasons, including: it is not properly before the court; it cannot be read; it appears to be roughly contemporaneous with Lee's purchase of the ring (for \$75,022), so it is at odds with his own assertion at trial and does not represent a present fair market value. *See Donaldson v. Greenwood*, 40 Wn.2d 238, 252, 242 P.2d 1038 (1952) (fair market value is amount of money purchaser is willing to pay). Certainly, it makes no sense for Nye, teetering on the brink of financial disaster, to have undersold one of her few valuable assets.

Lee also accused Nye of misrepresentation for her testimony at trial that she sold the ring for \$21,000 to pay her legal fees (RP 484) when the bankruptcy document indicates she transferred the ring to her attorney for \$21,000 worth of legal services. CP 292. This is a distinction without a difference, yet the trial court seized on this accusation to excoriate Nye.

¹⁸ This supposed appraisal was not submitted at trial; there appears to be no reason it could not have been; it has never been subjected to evidentiary analysis, including authentication, and it was created apparently for the purposes of insurance.

See, e.g., CP 230 (stating in its order denying her motion for reconsideration: “Petitioner’s blatant dishonesty in the sale of the ring is highly concerning.”) Strangely, too, the court accused Nye of exchanging the ring for considerably more in legal services than she did, though the record does not support his. CP 230, 257, 292.

This theme was picked up again in a post-trial contempt proceeding brought by Lee during which the court accused Nye of perjury:

there was testimony -- and I will tell you this -- at trial that she didn't know who the person was that she sold it to. She didn't have that information, she couldn't remember. And she was sworn. I swore her in just like any other witness. You can read the transcripts. I don't make up testimony. She didn't remember who the third party -- she said it was an arm's length transaction with somebody she didn't recall; there was no bill of sale. She was questioned pretty rigorously along this line.

3/10/16 RP 15; see, also, RP 14 (court referring to “numerous discussions” about the transfer). In fact, there was no testimony or questioning about to whom Nye sold the ring; she testified merely that she sold it for \$21,000 to pay her legal bills. RP 484. The court asked her lawyer, Mr. Clare, if there was any documentation of the sale, to which he responded, “not in evidence, no,” and then noted that there was some documentation about the ring’s purchase price and a description (referring to Lee’s exhibits). RP 513. Lee’s comments in closing were simply that “there is an assertion it was sold for 21 and doesn’t exist anymore.” RP 532. The only other

mention of the ring was the court's comment about value: "I know you [Lee] said you paid 75. She testified she sold it for \$21,000. Whether that was a fair price, I don't know. We will probably end up somewhere in the middle of the value of it." RP 553.

The point remains: the ring was Nye's, not the community's; Lee made no claim on the ring at trial; it did not exist at trial; Nye received \$21,000 in legal fees in exchange for it. Yet the court overvalued the ring, mischaracterized it, and mistook the facts regarding it, to Nye's prejudice. A hearing will help the court correct its course, as charted in its preliminary assessment that the parties both got into this financial mess together and should leave it on equal terms.

2) The Madrona Law Group.

Likewise a hearing is necessary to settle the facts related to the Madrona Law Group valuation, which changed based on Lee's post-trial submissions.

At trial, Nye argued her (closed) law practice was worth \$61,412, reflecting cash receivables and equipment as of separation. RP 511. Lee claimed the value was \$161,458 at the time of separation, calculated on an accrual basis (i.e., counting anticipated receivables). Ex. 263 (he prepared this exhibit to show anticipated receivables). In its preliminary ruling, the

court valued the practice at \$161,412 gross, discounted by 30% for a net value of \$112,988. CP 128.

In his post-trial submissions, Lee claimed the value should increase according to payment Nye received post-trial from client Blue Box (\$51,160), as declared by her in the bankruptcy proceeding, or \$27,257 more than the value claimed and adopted at trial. CP 255-56. The parties had disputed the value of these warrants at trial. RP 411-412, 476. In Nye's post-trial pleadings, she contended the Madrona Law value should not change because the warrants were cancelled after separation in exchange for Nye's willingness to relinquish all equity in Blue Box as part of its sale to IBM. CP 159.

In its final order, apparently, again, based on Lee's post-trial submissions, the court increased the value of the practice to \$188,670 gross, discounted by 30% for a net value of \$132,069. CP 197. Again, this result should be reviewed after a full and fair evidentiary hearing.

The post-trial pleadings also include additional assertions by both parties, including Nye, pointing out that the Madrona house value had increased by \$400,000 and the HELOC had been reduced from \$200,894 to \$78,000, portending a potential return to a plus-value. CP 158. Nye also reveals a post-trial diagnosis of an auto-immune disorder, with potential effects on her ability to work. CP 94-95.

Again, these factual assertions should be resolved by the trial court. Moreover, in dealing with these post-trial submissions, the court must not only observe evidentiary requirements but consider the different legal context (dissolution v. bankruptcy), which can effect how assets are described.

These process-related concerns are especially acute because the court appeared to take a punitive approach to Nye post-bankruptcy. The consideration of marital misconduct or marital fault is explicitly prohibited in RCW 26.09.080 (“without regard to marital misconduct”). A trial court that acts in violation of this prohibition abuses its discretion. *Marriage of Muhammad*, 153 Wn.2d 795, 806, 108 P.3d 779, 785 (2005). Here, as in *Muhammad*, “aspects of the property division strongly indicate that the trial court went beyond simply looking to the parties' existing economic circumstances,” and, instead, weighed Nye’s bankruptcy filing against her. See, also, 3/13/15 RP 60 (telling Lee the court is “so sorry” for him).

Filing for bankruptcy is a legal right, not misconduct. However, misrepresenting the facts is misconduct and the post-trial pleadings submitted by the parties raise serious questions about Lee in this regard. For example, he claims the parties had agreed to a distribution whereby Nye would pay him \$614,168 and offers an otherwise unauthenticated spreadsheet. CP 253. Nye denied this (CP 172), and Lee’s assertion

makes no sense. Nor does it make sense for the trial court to make determinations about the bankruptcy court proceeding without benefit of some actual briefing on the relevant law, which is a subject requiring no small amount of expertise. Certainly, Lee's allegations should not have prejudiced the judge against Nye any more than the bankruptcy proceeding itself. Here, as in *Muhammad*, reversal is required, since there is no fault in seeking bankruptcy protection and, in any case, fault is not a proper consideration. To the extent the post-trial pleadings raise factual disputes relevant to a just and equitable distribution, the court should hold a supplemental evidentiary hearing to resolve those disputes on the basis of admissible evidence and with notice and opportunity for the parties to test the evidence – in other words, basic due process. See CP 96 (Nye requesting a hearing).¹⁹

¹⁹ To the extent the court may consider conduct in the marriage, it is conduct affecting the economic community, such as the dissipation or wasting of assets or the unnecessary accumulation of debts and liabilities. See, e.g., *In re Marriage of Clark*, 13 Wn. App. 805, 808-809, 538 P.2d 145, rev. denied, 86 Wn.2d 1001 (1975); *In re Marriage of Steadman*, 63 Wn. App. 523, 526-528, 821 P.2d 59 (1991) (court may consider spouse's conduct in deliberately incurring unnecessary tax liabilities); *In re Marriage of Wallace*, 111 Wn. App. 697, 707-709, 45 P.3d 1131 (2002) (court may consider spouse's waste or concealment of assets); see also *In re Marriage of White*, 105 Wn. App. 545, 551, 20 P.2d 481 (2001). Nye has not and is not here arguing Lee dissipated assets, but plainly something happened to the wealth the parties, especially Lee, brought to the marriage, and, plainly, Lee did little during the marriage in terms of earning income.

F. THE COURT FAILED TO VALUE SOME OF THE ASSETS OR FAILED TO DISTRIBUTE THEM.

One requirement at dissolution is that the court dispose of all assets and liabilities. *Marriage of Harrington*, 85 Wn. App. 613, 624, 935 P.2d 1357, 1364 (1997), as amended on reconsideration (May 5, 1997); RCW 26.09.080. The court also has to value the assets, since value is a material and ultimate fact, without which this Court cannot review the overall distribution. *Wold v. Wold*, 7 Wn. App, 872, 503 P.2d 118 (1972).

Here, various items were omitted from the court's spreadsheet and distribution, such as the Bank of America Credit Card debt: Nye opened this credit account in 2010 to pay the parties' 2008 income taxes. RP 64-67, Ex. 110. At the time of trial, the account had an outstanding balance of \$25,000. Ex. 110.²⁰ Other items appear on the court's lists of assets and liabilities, but do not appear on the spreadsheet, so the distribution does not account for their values.²¹ On remand, at the supplemental evidentiary hearing, these issues should also be resolved.

In sum, the trial itself failed to resolve a great many factual issues, a problem worsened by the post-trial submissions and the trial court's

²⁰ Other missing items appear to include a claim for overpayment of family support to Lee's first wife (Ex. 1).

²¹ These items include Socius Law Group debt from Lee's litigation with his first wife (Ex. 163); Bryan Lee Consulting (generating some income). See CP 194, 193.

handling of those. For all these reasons, remand for a supplemental evidentiary hearing and correction of these errors is required.

V. CONCLUSION

For the foregoing reasons, Hillery Nye respectfully asks this Court to vacate the orders described above and remand for a supplemental evidentiary hearing to resolve factual disputes raised post-trial and for redistribution of the assets in accord with the statutory factors and other pertinent Washington law as discussed above, including that Nye should not be punished for seeking relief in bankruptcy. Moreover, the distribution should be just and equitable, meaning no gross disparity in how the parties are left. The court should also consider whether it is just and equitable to award to Lee the property contiguous to Nye's family residence or whether it makes more sense to compensate Lee monetarily for his interest in that asset.

Respectfully submitted this 13th day of June 2016.

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/s Nancy Zaragoza, WSBA #23281
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FILED
KING COUNTY, WASHINGTON

Oct 20 2015

SUPERIOR COURT CLERK
BY Robin Parker
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Marriage of:

NO. 13-3-10908-9 SEA

Hillery Lore Nye Lee,

Petitioner,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

and

Ralph Bryan Lee,

Respondent.

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner.
Petitioner's Lawyer.
Respondent (pro se)

II. Findings of Fact

Upon the basis of the court record, the court Finds:

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

The Respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

ORIGINAL
000187

1 The Respondent is a resident of the State of Washington.

2 **2.4 Date and Place of Marriage**

3 The parties were married on July 7, 2007 at Seattle, Washington.

4 **2.5 Status of the Parties**

5 The parties separated on August 20, 2013.

6 **2.6 Status of the Marriage**

7 The marriage is irretrievably broken and at least 90 days have elapsed since
8 the date the petition was filed and since the date the summons was served or
9 the Respondent joined.

10 **2.7 Separation Contract or Prenuptial Agreement**

11 There is no written separation contract or prenuptial agreement.

12 **2.8 Community Property**

13 The parties have real and personal community property as set forth in
14 Exhibits H and W. These exhibits are attached or filed and incorporated by
15 reference as part of these findings.

16 **2.9 Separate Property**

17 The Petitioner has real or personal separate property as set forth in Exhibit W.
18 This exhibit is attached or filed and incorporated by reference as part of these
19 findings.

20 The Respondent has real or personal separate property as set forth in Exhibit
21 H. This exhibit is attached or filed and incorporated by reference as part of
22 these findings.

23 **2.10 Community Liabilities**

24 The parties have incurred community liabilities as set forth in Exhibits H and
25 W. These exhibits are attached or filed and incorporated by reference as part
26 of these findings.

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2.11 Separate Liabilities

The Petitioner has incurred separate liabilities as set forth in Exhibit W. This exhibit is attached or filed and incorporated by reference as part of these findings.

The Respondent has incurred separate liabilities as set forth in Exhibit H. This exhibit is attached or filed and incorporated by reference as part of these findings.

2.12 Maintenance

Maintenance was not requested.

2.13 Continuing Restraining Order

Does not apply.

2.14 Protection Order

Does not apply.

2.15 Fees and Costs

Not Applicable.

2.16 Pregnancy

Neither spouse is pregnant.

2.17 Dependent Children

The parties have no dependent children of this marriage.

The children listed below are dependent upon either or both spouses.

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Name of Child	Parents' Names
MITCHELL LEE	RALPH BRYAN LEE & ELIZABETH A LEE
CARSON NYE	HILLERY NYE LEE & CHRISTOPHER J NYE
MITCHELL NYE	HILLERY NYE LEE & CHRISTOPHER J NYE

2.18 Jurisdiction Over the Children

Does not apply as there are no dependent children from this marriage.

2.19 Parenting Plan

Does not apply.

2.20 Child Support

Does not apply.

2.21 Other:

Does not apply.

III. Conclusions of Law

The court makes the following conclusions of law from the foregoing finds of fact:

3.1 Jurisdiction

The court has jurisdiction to enter a decree in this matter.

3.2 Granting a Decree

The parties should be granted a decree.

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3.3 Pregnancy

Does not apply.

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3.4 Disposition

The court should (a) determine the marital status of the parties, (b) make provision for the disposition of property and liabilities of the parties, (c) grant a money judgment in favor of Respondent, and (d) make provision for the change of name of the Petitioner.

3.5 Continuing Restraining Order

Does not apply.

3.6 Protection Order

Does not apply.

3.7 Attorney Fees and Costs

Does not apply.

3.8 Other

Does not apply.

Dated: October 20, 2015



Judge Julie Spector

NO. 13-3-10908-9 SEA

EXHIBIT H – RESPONDENT AND HUSBAND

PROPERTY AWARDED TO RESPONDENT/HUSBAND – RALPH BRYAN LEE

1. Money Judgment owed by Petitioner/Wife in the amount of \$246,918.
2. The Madrona House, commonly referred to as 101 Madrona Pl E, Seattle, WA 98112, or King County Tax Parcel number: 195470-0665-05, or Abbreviated Legal Description: Tract 106, Denny-Blaine-Lake Park Addition to the City of Seattle, as per Plat Recorded in Vol. 9 of Plats, pg 85.
3. The Vashon Lot and all leases, commonly referred to as 1132 Vashon Hwy SW, Vashon, WA 98070, or King County Tax Parcel number: 8887090-0314-02, or Abbreviated Legal Description: Ptn, Lots 50-51, Blk 1, Assessor's Plat of Vashon Heights, Vol. 46, pgs, 22-23.
4. All contents of the 101 Madrona Pl E residence except for the personal possessions of the Wife and her children, which shall be picked up by Wife, or designee, within 30 days.
5. The 2001 Mercedes Benz S500.
6. The 1973 Mercedes Benz 450 SL.
7. All assets and receivables of Bryan Lee Consulting.
8. All clothing, jewelry and personal property in the possession of Respondent/Husband.
9. Any and all rights and benefits derived as a result of Respondent/Husband's past or present employment, union affiliation, United States or other citizenship and/or residency within a state all of which include, but are not limited to: various forms of insurance; rights to social security payments; welfare payments; unemployment compensation payments; disability payments; Medicare and Medicaid payments; retirement benefits; educational benefits and grants; and, all other legislative, contractual, and/or donated benefits, whether vested or non-vested, and/or directly or indirectly derived through the activity of that specific party.
10. The entire TD Ameritrade account number ending in 9864.
11. All financial accounts in Respondent/Husband's Name or in his name and any person including the Petitioner/Wife.
12. Any remaining unspecified personal property with a value of less than \$1,000 will remain in the possession of the party that currently has the item. Any omitted item of personal property with a value of over \$1,000 will be divided by agreement of the parties, or further order of the court, if necessary.

DEBT ASSIGNED TO RESPONDENT/HUSBAND – RALPH BRYAN LEE

13. The Deed of Trust secured by 101 Madrona Pl E, Seattle, WA 98112 (King County instrument no. 20060801002857). Key Bank Loan number ending in 1913 with a current principal balance of approximately \$1,400,000 and an amount due of approximately \$500,000.
14. The Home Equity Line of Credit (“HELOC”) secured by 101 Madrona Pl E, Seattle, WA 98112 (King County instrument no. 20070530000095).
15. The Key Bank overdraft protection debt of approximately \$35,000.
16. Any amount remaining owed to Comcast relating to prior service at 101 Madrona Pl E, Seattle WA 98112.
17. Any amount remaining owed to Dr. Tom Wall.
18. Any amount remaining owed to Christine Bogard, CPA.
19. Any amount remaining owed to Socius Law Group.
20. All debts owed to Ralph and Donna Lee (approximately \$76,515).
21. All debts owed to Michael Johnston (approximately \$60,000).
22. Any obligations owed to Respondent/Husband’s former wife Elizabeth A. Lee and any obligations related to the support of Respondent/Husband’s children.
23. All income tax debt owed on the earnings or income of the Husband/Respondent for each of the following tax years: 2009, 2011, 2012, 2013, and 2014.
24. All debts incurred in the Respondent/Husband’s name alone since the date of separation.

NO. 13-3-10908-9 SEA

EXHIBIT W – PETITIONER AND WIFE

PROPERTY AWARDED TO PETITIONER/WIFE – HILLERY LORE NYE LEE

1. The Vashon House, commonly referred to as 9922 SW 112th, Vashon, WA 98070, or King County Tax Parcel number: 888700031303, or Abbreviated Legal Description: Ptn, Lots 50-51, Blk 1, Assessor's Plat of Vashon Heights, Vol. 46, pgs, 22.
2. All contents of the 9922 SW 112th- Vashon, WA residence.
3. The personal possessions of the Wife and her children currently stored at 101 Madrona Pl E, which shall be picked up by Wife, or designee, within 30 days.
4. The 2009 Mini Cooper.
5. The 2007 Honda Minivan.
6. All assets and receivables of Madrona Law Group split equally between husband and wife.
7. All clothing, jewelry and personal property in the possession of Petitioner/Wife.
8. Any and all rights and benefits derived as a result of Petitioner/Wife's past or present employment, union affiliation, United States or other citizenship and/or residency within a state all of which include, but are not limited to: various forms of insurance; rights to social security payments; welfare payments; unemployment compensation payments; disability payments; Medicare and Medicaid payments; retirement benefits; educational benefits and grants; and, all other legislative, contractual, and/or donated benefits, whether vested or non-vested, and/or directly or indirectly derived through the activity of that specific party.
9. The entire UBS SEP-IRA account number ending in 3218.
10. The entire UBS Rollover IRA account number ending in 300 CR.
11. All financial accounts in Petitioner/Wife's name or in her name and any person other than Respondent/Husband.
12. Any remaining unspecified personal property with a value of less than \$1,000 will remain in the possession of the party that currently has the item. Any omitted item of personal property with a value of over \$1,000 will be divided by agreement of the parties, or further order of the court, if necessary.

DEBT ASSIGNED TO PETITIONER/WIFE – HILLERY LORE NYE LEE

13. A \$246,918 monetary award and judgment granted to Respondent/Husband.
14. The Deed of Trust secured by 9922 SW 112th St, Vashon, WA 98070 (originally King County instrument no. 20041129000679, then subsequently recorded as 20120718000628 in connection with reassignment by the lender). The current principal balance is approximately \$372,000.
15. The Home Equity Line of Credit ("HELOC") secured by 9922 SW 112th St, Vashon, WA 98070 (King County instrument no. 20070524002696). The current principal balance is approximately \$100,000.
16. All debts associated with Petitioner/Wife's unpaid 2011 Federal Income Taxes including the current lien of approximately \$31,000 (King County instrument no. 20140929000297).
17. USAA credit card debt estimated at approximately \$1,500 at the date of separation.
18. Any amount remaining owed to Davis Wright Tremaine for legal fees associated with Nye v Hughes is split equally between husband and wife.
19. All debts owed to Larry Johnson (approximately \$10,000 as of the date of separation).
20. All income tax debt owed on the earnings or income of the Wife/Petitioner for each of the following tax years: 2009, 2011, 2012, 2013, and 2014.
21. All debts incurred in the Wife/Petitioner's name alone since the date of separation.

In re Marriage of Hillery Lore Nye Lee (Wife) and Ralph Bryan Lee (Husband) NO. 13-3-10908-9 SEA

ASSETS & DEBTS		Notes	Gross Value	Liens/ Debts	NET VALUE	TO WIFE		TO HUSBAND	
						COMM	SEP	COMM	SEP
1	REAL ESTATE								
2	Seattle House - 101 Madrona	(1)	1,200,000	1,962,282				0	
3	HELOC - Seattle House (EX 235)			200,894	-200,894			-200,894	
4									
5									
6	Vashon House - 9922 1112th St SW	(2)	385,950	313,623	72,327		72,327		
7	HELOC - Vashon House			100,000	-100,000		-100,000		
8	Assumed foreclosure or short-sale								
9									
10	Vashon Other Property (original purchase price) (EX 261)		55,648		55,648				55,648
11	ATT Lease (attached to Vashon Other Property) (EX 210)		152,352		152,352				152,352
12	Rents Since Separation on Vashon (less taxes and utilities)		23,987		23,987	11,994		11,994	
13	Madrona Law Firm PLLC (at time of separation)	(6)	188,670	Discounted 30%	132,069	66,035		66,035	
14									
15	LIQUID ASSETS ON HAND								
16	Cash in HLN Key Bank Account		5,858		5,858	5,858			
17									
18	HOME FURNISHINGS								
19	Madrona Home Furnishings Purchased by Husband (\$100,000 original; \$10,000 garage sale value)	(3)	10,000		10,000				10,000
20	Pianos	(4)	5,000		5,000				5,000
21	Vashon		1,000		1,000		1,000		
22									
23	AUTOMOBILES								
24	2009 Mini Cooper (EX 233)		11,852		11,852	11,852			
25	2007 Honda Minivan (EX 233)		15,804		15,804	15,804			
26	2001 Mercedes S500 (EX 233)		4,686		4,686				4,686
27	1973 Mercedes 450SL		500		500			500	

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In re Marriage of Hillery Lore Nye Lee (Wife) and Ralph Bryan Lee (Husband) NO. 13-3-10908-9 SEA

	ASSETS & DEBTS	Notes	Gross Value	Liens/ Debts	NET VALUE	TO WIFE		TO HUSBAND	
						COMM	SEP	COMM	SEP
29	JEWELRY				0				
30	Engagement Ring (Appraisal value)		106,150		106,150	53,075		53,075	
32	DEBTS - GENERAL UNSECURED								
33	Comcast (EX 165)			1,125	-1,125			-1,125	
34	Dr. Wall (EX 237)			5,150	-5,150			-5,150	
35	Christine Bogard (EX238)			1,980	-1,980			-1,980	
36	Key Bank Overdraft Protection (EX 239)			35,054	-35,054			-35,054	
37	USAA Credit Card			1,500	-1,500	-1,500			
38	DWT debt (EX 58 & 262) includes 0 interest	(5)		332,000	-332,000	-166,000		-166,000	
39									
40	DEBTS - FRIENDS AND FAMILY								
41	Ralph and Donna Lee (EX 271)			76,515	-76,515				-76,515
42	Michael Johnston (EX 191)(Originally \$60,000)			25,000	-25,000				-25,000
43	Larry Johnson (household)			0	0				
44	Hita and Karl Crane (household) (post separation - not part of marital estate; not listed in bankruptcy)				0				
45	Hita and Karl Crane (W personal loan)(post separation - not part of marital estate; not listed in bankruptcy)				0				
46	John Connors (H personal loan) (post separation - not part of marital estate; not listed in bankruptcy)				0				
47	TAXES								
48	Unknown			0	0				
49	2012 Husband Income Tax			0	0				
50	Unknown			0	0				
51	2011 Wife Income Tax (EX 124)			31,559	-31,559	-31,559			
52	2012 Wife Income Tax			0	0				
53	2013 Wife Income Tax			62,000	-62,000	-41,667	-20,333		
TOTALS			2,167,457	3,148,682	-275,544	-76,109	-47,006	-278,600	126,171

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In re Marriage of Hillary Lore Nye Lee (Wife) and Ralph Bryan Lee (Husband) NO. 13-3-10908-9 SEA

ASSETS & DEBTS	Notes	Gross Value	Liens/ Debts	NET VALUE	TO WIFE		TO HUSBAND	
					COMM	SEP	COMM	SEP
				MARITAL LIEN >	-101,246		101,246	
Husband's percentage (entered by user)	50.0%			Each party's total dollars	-177,355		-177,355	
Wife's percentage (automatic)	50.0%			Each party's percentage	50%		50%	

Reimbursements owed party-to-party outside the division of community property:

Husband Owed for Division of Madrona Law Group Assets (see below)

Husband Owed for net ATT Lease Payments Retained by Wife Post Separation (\$30,500 gross payments less \$800 of property taxes and \$1,425 of utilities [19 months @ \$75]) plus additional \$10,200 for six months between original intended order date and now

Husband Owed for value of 2.62 carat engagement ring

**FINAL TRANSFER PAYMENT = MARITAL LIEN + SUM OF REIMBURSEMENTS
(BEFORE INTEREST)>**

**INTEREST CALCULATED AT 12% (NO COMPOUNDING) FROM ORIGINALLY
SCHEDULED AWARD DATE OF OCTOBER 15, 2015**

FINAL TRANSFER PAYMENT = MARITAL LIEN + SUM OF REIMBURSEMENTS >

66,035	(6)
26,563	
53,075	
246,918	
0	0
246,918	

-246,918
0
-246,918

In re Marriage of Hillery Lore Nye Lee (Wife) and Ralph Bryan Lee (Husband) NO. 13-3-10908-9 SEA

ASSETS & DEBTS	Notes	Gross Value	Liens/ Debts	NET VALUE	TO WIFE		TO HUSBAND	
					COMM	SEP	COMM	SEP

- (1) It is assumed that the Seattle House (aka 101 Madrona Pl E) will either proceed to foreclosure or be liquidated through a negotiated short-sale. In foreclosure the first trust deed would be eliminated without recourse. Thus, line 4 fully eliminates the excess of the first trust deed over the value of the property. However, the second mortgage (the HELOC) has recourse. That is, while a foreclosure would eliminate the underlying collateral, it would not eliminate the HELOC. In foreclosure, the HELOC would convert to unsecured debt.

- (2) Petitioner represents that she is currently being sued Bank of America, the holder of the Deed of Trust on her property at 9922 SW 112th St Vashon, WA. In the complaint BofA asserts that the sum of \$313,623 plus interest from 4/1/2013 is owed on the property. Petitioner represents that the principal, back payments, interests and other fees & expenses equal or exceed the market value of the property. As stated in note, the second mortgage (the Vashon HELOC) has recourse. That is, while a foreclosure would eliminate the underlying collateral, it would not eliminate the HELOC. In foreclosures, the HELOC would convert to unsecured debt.

- (3) The court requested that the gross home furnishings spending made by Husband from separate funds be added to this spreadsheet. Line 19 notes the gross amount of \$100,000 but uses the estimated net realizable value as of the date of separation for the calculations above.

- (4) The court suggested that the previous estimate of \$10,000 for the antique pianos might be high. The amount has been reduced to \$5,000 in the spreadsheet above.

- (5) As testified to by Respondent based on his conversations with Davis Wright Tremaine (DWT) collections personnel, DWT has written off the entire obligation owed by Petitioner and has no intention of pursuing this potential debt. As also noted in Petitioner's letter to DWT management, DWT's representation of Petitioner was significantly flawed and potentially exposes the firm to a counter-claim for malpractice. However, the wife listed \$332,000 as debt in her subsequent bankruptcy filing plus interest (\$544,025). The court finds this debt to be a less than likely collectible debt from DWT but awards this principal balance equally between the parties as community debt.

- (6) Madrona Law Group net assets of \$132,069 as of separation are divided equally (\$66,035). Repayment of Husband's Startup Capital of \$47,000 (EX 257 plus verification of bankstatements [EX 248] \$25k on 1/6/2009, \$10k on 1/28/2009, \$10k on 2/13/2009 and \$2k on 6/11/2009) is deemed a gift to the community and is therefore not refundable.

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