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DIVISION II

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STATE OF WASHINGTON

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION TWO

NO. 49436-1-II

DONALD MURIDAN

Appellant,

v.

NICOLE REDL

Respondent

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON
IN AND FOR PIERCE COUNTY, WASHINGTON

The Honorable Garold E. Johnson, Judge

OPENING BRIEF OF APPELLANT

CORRECTED VERSION

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I. INTRODUCTION

A. Background

The appellant, Donald Muridan, appeals the trial court's finding that a committed intimate relationship ("CIR") existed between him and the Respondent, Nicole Redl.

After finding that a CIR existed, the trial court **instantly** -- and without **any** further deliberations -- ruled that three assets which belonged to Mr. Muridan should be shared with Ms. Redl on a "50/50" basis.

For various reasons that are documented herein, this decision constituted clear and obvious error. Most notably, the testimony of **both** parties established that the assets in question **were not** quasi-community property. In fact, they were Mr. Muridan's **separate property**. The trial completely ignored this issue, and indeed, never even acknowledged it.

The assets that the court wrongly divided were as follows:

1. Ownership Interest in JAR Mgmt, LLC

In **August, 2014**, Mr. Muridan acquired a 25% ownership in a retail marijuana business, JAR Mgmt LLC. Without engaging in **any** fact-finding concerning value of this asset, the court ruled that it was worth \$700,000. Accordingly, it awarded Ms. Redl one-half of this amount (\$350,000).

2. Income from the Sale of Marijuana Equipment

In 2013, Mr. Muridan sold marijuana equipment for \$50,000 and carried a note from the buyer which paid him \$1,425 per month. Because the

trial court believed that this separate asset should also be equally shared with Ms. Redl, it awarded her an additional \$25,000 for her share of the \$50,000 contract proceeds.

3. Timberland Bank Account

At the time of trial, Mr. Muridan had \$25,000 in a separate bank account with Timberland Bank. Although Ms. Redl admitted that she **never** had **any** expectation of sharing in any of Mr. Muridan's bank accounts, the trial court also awarded Ms. Redl one-half of the funds in this account.

Altogether, the total value of Mr. Muridan's separate assets which the trial court awarded to Ms. Redl was **\$387,500**.

B. Summary of Appeal

This appeal challenges the trial court's decisions in four broad ways.

First, through his lawyer, Mr. Muridan respectfully points out that the trial court did not understand the law. As a result, it did not undertake the type of analysis that the Supreme Court has required in CIR cases.

Second, while it is questionable whether a CIR *ever* existed, it is clear that a CIR **did not** exist in **August, 2014**, which was the date that Mr. Muridan acquired his interest in JAR Mgmt. Any CIR that *may* have existed prior to that date had already ended for various reasons, including the fact that by August, 2014, Ms. Redl had formed an intimate relationship with the man that she would soon become pregnant by and leave Mr. Muridan to marry, John Sidell. Since trial courts cannot divide assets that are acquired

after a CIR has ended, the trial court lacked jurisdiction to divide the JAR Mgmt asset.

Third, the undisputed evidence at trial established that the parties always had a **separate property agreement** by which they had agreed to keep their respective incomes, assets and bank accounts separate from each other. For reasons that are not understood, the trial court utterly ignored the separate property agreement, and indeed, never even mentioned it.

Finally, even if Mr. Muridan's assets were properly subject to equitable distribution, the trial court divided the assets without considering an essential factor that appellate courts have repeatedly stated is of "*paramount concern*" in dissolution cases, namely, the **economic circumstances of the parties at the time the division is to take effect**.

The trial court's failure to consider this factor not only constituted clear error, but it was also highly prejudicial to Mr. Muridan.

At the time of trial, Mr. Muridan had Stage Four prostate cancer and was not working. Indeed, his only sources for money were the very same assets that the trial court divided with Ms. Redl. To make matters worse, the trial court determined that until Mr. Muridan paid the \$387,500 judgment in full, all of his future income stream would be assigned to Ms. Redl.

In contrast, Ms. Redl's new husband, John Sidell, had sufficient wealth that Ms. Redl no longer had to work and could afford to be a full-time "stay at home mom" for their baby. In addition, Ms. Redl had the option of

returning to her work as a math teacher at any time. Thus, while Ms. Redl's financial outlook was secure, Mr. Muridan's financial outlook was grim.

II. ASSIGNMENTS OF ERROR

1. The trial court did not apply the mandatory "three-prong" analysis for CIR cases that has been required by the Washington Supreme Court;
2. The trial court erred as a matter of law in concluding that a CIR existed on or after **August, 2014**;
3. Even if a CIR existed, the trial court erred by concluding that Mr. Muridan's assets were "*quasi-community*" rather than separate property;
4. When deciding upon an equitable distribution of property, the trial court erred by failing to consider the health and economic circumstances of the parties; and
5. The trial court's valuations of Mr. Muridan's assets were unsupported by findings of fact and were contradicted by the undisputed evidence.

III. ISSUES PRESENTED

1. Was the trial court required to apply the "three-prong" analysis that is set forth in *Marriage of Pennington*, 142 Wn2d 2d 592, 602, 14 P.3d 764 (2000)?
2. Did the trial court err as a matter of law in concluding that a CIR existed on **August, 2014**?
3. Was the trial court required to consider whether Mr. Muridan's assets were controlled by a separate property agreement?
4. Before deciding upon an equitable distribution of Mr. Muridan's property, was the trial court required to consider the health and economic circumstances of the parties?
5. Were the trial court's valuations of Mr. Muridan's assets contradicted by the undisputed evidence?

IV. STATEMENT OF CASE

A. FACTUAL TIMELINE OF RELATIONSHIP

2008: Dating Relationship

Mr. Muridan and Ms. Redl met in 2008 via an internet dating site. RP at vol. 2 at p. 128, lines 8-12. Mr. Muridan was 42 years old and Ms. Redl 34 years old.¹

Mr. Muridan was the part owner of a fencing installation company, Fenceco, and earned \$120,000 per year. RP vol. 1 at p. 17, lines 11-23; vol. 2 at p. 137, lines 5-7. Ms. Redl was an eighth grade math teacher who earned \$67,132 per year. RP vol. 3 at p. 350, lines 5-9; vol. 3 at p. 388, lines 20-24.

2009: Decision to Live Together

When the parties first met, Ms. Redl was paying \$1500 in monthly rent. To save rental expenses, she moved in to Mr. Muridan's house on Lawrence Street (North Tacoma) and paid rent of \$800 per month. RP vol. 2 at p. 128, lines 18-25; vol. 3 at p. 376, line 15.

After approximately eight months, the parties agreed that instead of paying rent, Ms. Redl would pay for cable bills. RP vol. 2 at p. 129, lines 19-21. As before, Mr. Muridan continued to pay all costs for housing, including mortgage and utility bills. RP vol. 2 at p. 146, lines 7-12.

2009-2010: Modification of Agreement for Living Expenses

Between 2009 and 2010, several events occurred which led the parties to modify their prior agreement concerning the payment of living expenses:

1. Mr. Muridan Diagnosed with Stage Four Prostate Cancer. Shortly after the parties began living together, Mr. Muridan was diagnosed with Stage Four prostate cancer (diagnosed in February, 2009). RP vol. 2 at p. 129, lines 18-19; vol. 2 at p. 148, lines 14-15. At the time of trial, the cancer had spread to his

¹ Mr. Muridan's DOB is 3/21/66; Ms. Redl's DOB is 3/12/74.

lymph nodes, but was in remission. RP vol. 4 at p. 40, line 22 to p. 41, line 6.

2. Mr. Muridan Did Not Have Health Insurance. Unfortunately, Mr. Muridan's medical insurance had lapsed prior to his diagnosis of cancer. Due to his pre-existing condition of cancer, he was unable to find new insurance. RP vol. 2 at p. 148, lines 6-16.
3. Discovery of Means for Insuring Mr. Muridan. In 2010, Ms. Redl learned that Mr. Muridan could obtain insurance coverage through her school district if the parties signed paperwork with the school district stating that they were domestic partners. RP vol. 2 at p. 147, line 11 to p. 149, line 5. The necessary paperwork was signed and Mr. Muridan obtained coverage. Id.
4. Birth of Son. In August, 2010, the parties' only child, Donald Cooper Muridan-Redl ("Donnie") was born. RP vol. 3 at p. 267, lines 20-23.

After the occurrence of these events, the parties modified their prior agreement. As before, Mr. Muridan paid for housing and utility expenses. In return, Ms. Redl paid for health insurance and daycare expenses for the first 24 months after Donnie was born. Findings of Fact and Conclusions of Law at CP 20, lines 2-5.² Mr. Muridan later took over the daycare expenses for the next 24 months. Id.

From this time forward until the parties separated in 2015, Mr. Muridan also paid for 100% of the expenses for food, vacations and clothing for Donnie. Id at CP 20, lines 4-5.

2010: First and Only Discussion of Marriage

Two months after Donnie was born, Mr. Muridan proposed marriage to Ms. Redl. RP vol. 3 at p. 271, lines 2-5. This was in December, 2010.

² Since Ms. Redl has not appealed any of the trial court's findings of fact, she is bound by them. *Nearing v. Golden State Foods Corp.*, 114 Wn.2d 817, 818, 792 P.2d 500 (1990).

Although Mr. Muridan presented Ms. Redl with a \$3,500 engagement ring, the issue of marriage was never mentioned again by either party. RP vol. 3 at p. 307, lines 4-23. Ms. Redl never initiated any wedding plans or plans to marry. RP vol. 3 at p. 308, lines 10-12.

The parties never registered as domestic partners under the Washington Domestic Partnership Act, RCW 26.60.

2011: Complete Cessation of ALL Sexual and Physical Contact

In 2011, Mr. Muridan became completely unable to have an erection due to his prostate surgeries. Thereafter, all sexual relations between the parties ceased. RP vol. 3 at p. 266, lines 10-17.

Notwithstanding his inability to get an erection, Mr. Muridan still tried to sexually please Ms. Redl. RP vol. 3 at p. 266, lines 14-17. However, she rejected him and stated that since he could not get an erection, there was nothing he could do to please her. *Id.*

Although Mr. Muridan and Ms. Redl shared the same bed, after 2011 their relationship became nothing more than a co-parenting relationship, with no hugging or kissing. RP vol. 3 at p. 266, lines 10-17; vol. 3 at p. 303, line 19 to p. 304, line 4. According to Mr. Muridan, sharing a bed with Ms. Redl was like sharing a bed with a sibling. RP vol. 3 at p. 266, lines 20-21. He testified that the only physical contact between the parties was “*like the smooch here and there, but it was more like – it wasn’t affectionate.*” RP vol. 3 at p. 304, lines 1-5.

At trial, Mr. Muridan was specifically asked why he chose to stay in the relationship. As he explained, he was afraid of separating from Ms. Redl due to her repeated threats that if they separated, she would take their son and make him a “weekend father”:

Q. [By Ms. Forrest] So if the intimacy was lacking, why didn't you end the relationship then [in 2011]?

A. [By Mr. Muridan] Because I did not want to lose my child. She was – she had threatened me on multiple occasions that if we ever separated that she was going to take my child and make me a weekend father. And I was trying to keep everything together.

Q. Okay.

A. I'm the kind of guy that would be -- stay together just for my child and be an empty nester. Not a problem.

RP vol. 3 at p. 304, lines 11-20.

Ms. Redl did not deny making such threats at trial.

During the trial, a witness, Tyler Severy, testified that he had personally heard Ms. Redl threaten Mr. Muridan in this manner. RP vol. 1, at p. 22, lines 16-18.

2011: Mr. Muridan Starts “Rainier Wellness Center”

In 2011 Mr. Muridan’s business, Fenceco was closed. RP vol. 1 at p. lines 21-25.

After Fenceco was closed, Mr. Muridan shifted his business interests to the burgeoning marijuana industry. Thus, he opened a non-profit marijuana dispensary, Rainer Wellness Center (“RWC”), which was licensed under the provisions of RCW 65.51a. RP at vol. 2 p. 157, line 14 to p. 158,

line 14. RWC was open for business from the spring of 2011 until it closed in May, 2014. RP vol. 2 at p. 157, line 19; vol. 2 at p. 159, line 3-7. Mr. Muridan was the executive director of RWC and earned a salary of \$120,000 per year. RP vol. 2 at p. 158, line 18; vol. 2 at p. 141, lines 2-3.

2012: Couples Counseling and Attempts at Inter Vivo Fertilization

In 2012 the parties entered couples counseling. RP vol. 3 at 312, lines 21. While no testimony was offered as to what issues brought the parties to counseling, one of the issues that was discussed was whether a new pregnancy should be attempted via inter vivo fertilization. Id.

Mr. Muridan was initially opposed to IV treatments. RP vol. 3 at p. 312, lines 20-21. He did not want another baby due to his fears that he might not survive his cancer long enough to “get to know” Donnie. RP vol. 3 at p. 312, lines 16-19. However, the counselor advised Mr. Muridan that the “right thing to do” would be to “move forward” with the IV treatments. RP vol. 3 at p. 312, line 16, to p. 313, line 2. Accordingly, Mr. Muridan reluctantly agreed. Id. Treatments were tried in 2012 and early 2013, but were unsuccessful. RP vol. 3 at p. 283, lines 10-14; vol. 2 at p. 277, lines 7-10; vol. 3 at p. 313, lines 3-7.³

2012-2015: General Description of Relationship

Witnesses testified that when Mr. Muridan and Ms. Redl were seen together, Ms. Redl was verbally aggressive and would talk to Mr. Muridan

³ Both Mr. Muridan and Ms. Redl contributed their separate income for the treatments. RP vol. 3 at p. 313, lines 5-6.

using “very sharp language, curt, hurtful.” RP vol. 1 at p. 22, lines 7-18; vol. 1 at p. 36, line 9, to p. 37, line 6. One witness testified that Ms. Redl would “yell” at Mr. Muridan, who would “just sit here and take it.” RP vol. 1 at p. 37, lines 3-5. Another witness testified that when Ms. Redl became verbally aggressive, Mr. Muridan would “put up a wall and kind of walk away.” RP vol. 1 at p. 19, line 7, to p. 20, line 14.

Conflicts between the couple occurred “at least several nights a week.” RP vol. 1 at p. 36, line 9 -15. One of Ms. Redl’s witnesses testified that as early as 2010, emotional outbursts by Mr. Muridan were “commonplace.” RP vol. 3 at p. 342, line 24 to p. 343, line 2.

At trial, Donnie’s guardian ad litem, Stephen Downing, testified that the parties did not have a “history of communicating and getting along with one another.” RP vol. 2 at p. 104, line 19, to p. 105, line 3. This was one of the primary reasons why he recommended against a joint custody plan. *Id.*

No testimony was offered as to any joint hobbies or interest the couple pursued such as gardening, hiking, music, etc.

The only testimony offered concerning any joint social activity was that the parties attended barbecues and cookouts together RP vol. 1 at p. 18, lines 11-12. However, the record shows that these events were marred by conflicts between Mr. Muridan and Ms. Redl. See discussion, *supra*, p. 9.

While Mr. Muridan and Ms. Redl took vacations together, no

testimony was presented to show that they enjoyed these vacations or got along with each other.

At no time during the trial was any testimony received which would indicate that that Mr. Muridan and Ms. Redl were ever in love with each other. No witness testified as to ever seeing any public displays of affection.

2013: Mr. Muridan Files for Bankruptcy

In January, 2013, Mr. Muridan filed for bankruptcy. RP vol. 3 at p. 277, lines 21-24; vol. 3 at p. 281, lines 12-16. The bankruptcy was solely filed by Mr. Muridan, and did not involve Ms. Redl in any way. RP vol. 4 at p. 34, lines 16-22.

Prior to filing bankruptcy, Mr. Muridan bought a second car, which although titled solely in his name, was provided for Ms. Redl to use. RP vol. 3 at p. 277, lines 21-24. Ms. Redl paid for her own car insurance. RP vol. 3 at p. 376, line 21.

Also prior to bankruptcy, Mr. Muridan gave Ms. Redl \$20,000 in cash to hold for him. RP at vol. 3 at p. 279, lines 6-9; vol. 3 at p. 280, lines 15-23. Subsequently, Ms. Redl returned all but \$5,000 of this amount. RP vol. 3 at p. 279, lines 13-14; vol. 3 at p. 297, line 22 to line 24.

Ms. Redl did not provide any testimony as to what she did with the \$20,000 cash or the unreturned portion of \$5,000. However, Mr. Muridan believed that she had deposited the cash into one of her bank accounts. See

RP vol. 3 at p. 298, lines 4-5. He also believed that she used the unreturned \$5,000 portion to pay for an attorney. RP 3 at p. 298, lines 6-10.

If Ms. Redl had deposited the \$20,000 cash into an account under her name, no evidence was introduced as to what type of account was involved. Nor was any testimony introduced to indicate that Ms. Redl ever had any of her own money in the account. Thus, there is no evidence in the record to show that any commingling of funds ever occurred with respect to the \$20,000 cash.

Mr. Muridan Carries Note for the Sale of Marijuana Equipment

In 2013, Mr. Muridan sold marijuana equipment that he had purchased a year earlier. RP vol. 3 at p. 321, lines 1-21. The equipment was sold via a \$50,000 note which called for amortized payments from the buyer in the amount of \$1,425 per month. RP vol. 3 at p. 293, lines 22-24; vol. 3 p. 318, line 18 to p. 320, line 4. At the time of trial, there was approximately six months of payments left to be paid. RP vol. 3 at p. 321, lines 17-22.

March, 2014: Ms. Redl Forms New Intimate Relationship

In March, 2014, Ms. Redl became intimately involved with the man she would soon become pregnant by and leave Mr. Muridan to marry, John Sidell.

Mr. Sidell testified that he first met Ms. Redl in March, 2014, while she was vacationing in Las Vegas. RP vol. 1 p. 47, line 23 to p. 48, line 3. At the time, he was a resident of Ohio. RP vol. 1 at p. 48, lines 16-18. While

the specific details of how often Mr. Sidell saw Ms. Redl after their initial meeting were not disclosed at trial, on at least one occasion Ms. Redl secretly flew to Cleveland to be with him. RP vol. 4 at p. 9, lines 6-10. During trial, Mr. Sidell was unable to remember how often he travelled to Seattle to be with Ms. Redl. RP vol. 1 at p. 51, lines 16-20.

Both Mr. Sidell and Ms. Redl admitted that by May, 2014, they were fully engaged in a sexual relationship. RP vol. 1 at p. 48, lines 7-10; vol. 4 at p. 10, line 1.

Summer, 2014: Both Parties “Want Out” of Relationship

At trial, Ms. Redl confirmed that she had filled out a questionnaire which stated that she wanted to leave Mr. Muridan in the summer of 2014. RP vol. 4 at p. 11, line 1-19. As Ms. Redl explained, she and Mr. Muridan “hardly ever talked” and she was staying in the relationship for the sake of Donnie. RP vol. 4 at p. 25, line 22 to p. 26, line 6.

Mr. Muridan felt the same way. He testified that since Ms. Redl had repeatedly threatened to take Donnie away from him and make him a “weekend father,” he was just “going through the motions” and staying in the relationship so that Donnie would not grow up in a “broken family.” RP vol. 3 at p. 307, lines 4-10; vol. 3 at p. 317, line 17 -24. He also testified that if Donnie had not been born, he probably would have left the relationship years earlier. RP vol. 3 at p. 317, lines 17-18.

August 2014: Mr. Muridan Acquires Interest in JAR Mgmt LLC

After RWC closed, Mr. Muridan acquired a 25% ownership in a retail marijuana business, JAR Mgmt LLC (also known as “Rainier on Pine”). RP vol. 2 at p. 163, lines 8-10; vol. 3 at p. 318, line 24 to p. 319, line 3.

Mr. Muridan acquired this ownership interest in **August, 2014**. *Id.*⁴ This was five months after Ms. Redl had formed a relationship with Mr. Sidell. See discussion, *supra*, pp. 12-13.

The company had its grand opening in August, 2014. RP vol. 3 at p. 284, lines 3-7; vol. 2 at p. 162, lines 9-10.

September, 2014: Mr. Muridan Attempts to Keep Ms. Redl “Happy”

By September, 2014 Mr. Muridan recognized that his relationship with Ms. Redl was “obviously going south.” RP vol. 2 at p. 140, lines 3-5. Because he did not want Donnie to have a “broken family,” he began making various efforts to keep Ms. Redl “happy.” RP vol. 2 at p. 139, line 4 to p. 140, line 7; vol. 3 at p. 317, line 17 -24.

One of Mr. Muridan’s efforts was to give Ms. Redl access to his separate checking account at Key Bank. This was done in September, 2014. RP vol. 2 at p. 139, line 4 to p. 140, line 7; vol. 3 at p. 284, lines 21-23.

The funds in this account were contributed solely by Mr. Muridan, and never by Ms. Redl. RP vol. 2 at p. 140, lines 12-14; vol. 2 at p. 141, lines 6-17.

⁴ While Mr. Muridan testified that his interest in JAR Mgmt was acquired in August, 2014, at another point in his testimony he said it was acquired in either July or August, 2014. See RP vol. 2 at p. 161, lines 11-12.

At trial, Mr. Muridan explained why he added Ms. Redl's name to his

Key Bank account:

Q. [By Ms. Forrest] Did you have a discussion about Niki depositing her income into that account as well?

A. [By Mr. Muridan] No.

Q. Why not?

A. She never did.

Q. Why not?

A. Because we -- it never -- it just never came up. The money was there for her to use for our son. But I let her use it for other things, too, like if she wanted to go to the nail salon. Again, I was trying to keep her happy, because I didn't want this whole thing to go south on me and end up in a place like this.

RP vol. 2 at p. 141, lines 6-17.

Mr. Muridan's efforts to keep Ms. Redl "happy" continued into the following month (October, 2014) when he made a Facebook posting that referred to Ms. Redl as his "hot significant other." RP vol. 3 p. 284 line 24 to p. 285, line 3. The following month he made a similar posting which described Ms. Redl as "the love of my life." RP vol. 3 at p. 285, lines 4-9.

When questioned at trial about why he made these postings, Mr.

Muridan once again explained that he was trying to make Ms. Redl happy:

A. [By Mr. Muridan] . . . I just -- I was trying to keep the relationship together, and I was doing anything. And I thought, I knew she was going to read it, and I was thinking that may help me.

Q. [By Ms. Forrest] You were trying to reconcile the relationship?

A. I was -- well, yeah. I was trying to keep it together for my son. I didn't want to -- she would always threaten me that she was going to make me a weekend dad. And I was just really just trying keep everything together.

RP vol. 3, p. 313, line 17 to p. 314, line 9.

December, 2014: Mr. Muridan Confirms New Intimate Relationship

In December, 2014, Mr. Muridan broke into Ms. Redl's online account and confirmed that she had an intimate relationship with Mr. Sidell.

RP vol. 2 at p. 166, lines 16-17; vol. 4 at p. 9, lines 2-5.

Ms. Redl admitted the relationship, but lied by stating that she had cut all ties with Mr. Sidell. RP vol. 3 at p. 255, lines 19-21; vol. 3 at p. 317, lines 14-15.

Outwardly, Mr. Muridan accepted what Ms. Redl told him. However, he secretly installed a GPS device on the car she was driving. RP vol. 2, p. 165, line 21 to p. 66, line 14.

When asked at trial why he did not end the relationship at this time, Mr. Muridan explained that he was doing what he thought was best for Donnie:

[A]fter we discussed, you know, the situation, that you know, I knew, she told me that she ended the relationship with John Sidell. And I wanted - again, it goes back to me wanting to work on the relationship for my son's behalf. If my son wasn't involved I would have left probably a few years ago.

RP vol. 3 at p. 317, lines 8-18.

January, 2015: Ms. Redl Continues to See Mr. Sidell

In mid-January, 2015, Mr. Muridan had to travel to Seattle for surgery and one week of hospitalization at Harborview Hospital. RP vol. 3 at p. 287, lines 3-6. So that Ms. Redl could be with him, he rented a condo next to the hospital for her to use. Id

Although Mr. Muridan's adult son, Joe Laporte also wanted to stay at the condo, Ms. Redl made it understood that she wanted to be alone with Mr. Muridan. RP vol. 1 at p. 38, lines 6-9.

In actual fact, Ms. Redl used the occasion to secretly see Mr. Sidell, who had flown to Seattle to be with her. RP vol. 4 at p. 9, lines 10-15. While Ms. Redl admitted to having sexual relations with Mr. Sidell during this time, she claimed that sexual activity did not occur at the rented condo. RP vol. 4 at p. 9, lines 14-18. However, Mr. Muridan's adult son, Joe Laporte, saw Mr. Sidell there. RP vol. 1 at p. 39, lines 3-15.

January-February, 2015: Final Two Months of Relationship

During the final two months that Ms. Redl resided at Mr. Muridan's house, he continued his efforts to "keep her happy."

One week prior to the surgery at Harborview Hospital, Mr. Muridan sent an email which thanked Ms. Redl for her support and stated that he wanted to be "a great husband." RP vol. 3 at p. 287, lines 20-22. After his surgery, he made a Facebook posting that said that without her, he "wouldn't have made it." RP vol. 3 at p. 288, lines 10-12. He also sent a joint email to

both his attorney and Ms. Redl which stated that he wanted to marry Ms. Redl and put her on the title to his house. RP vol. 3 at p. 289, lines 11-25.

On Valentine's Day, 2014, Mr. Muridan treated Ms. Redl to a one week vacation to Palm Springs, California. RP vol. 3 at p. 291, lines 2-5. Prior to the trip, he presented her with a \$4,000 necklace, flowers and a card which stated that he loved her. RP vol. 3 at p. 291, lines 6-21.

February 27, 2015: Last Day of Relationship

The relationship permanently ended on Thursday, February 27, 2015. This was only a few days after the parties had returned from the Valentine's Day trip to Palm Springs.

On Thursday, February 27, 2015, Mr. Muridan discovered a letter from Ms. Redl's obstetrician which congratulated her on becoming pregnant. RP vol. 2 at p. 253, lines 13-20. Since Mr. Muridan's surgeries had left him completely infertile, he instantly recognized that Ms. Redl had been lying to him, and that obviously, she was pregnant by Mr. Sidell. RP vol. 2 at p. 130, lines 20-22; vol. 3 at p. 300, lines 12-14.

Upon finding the letter, Mr. Muridan instantly realized that it was time to "move on." RP vol. 2, p. 130, line 20 to p. 131, line 4; vol. 3 at p. 255, lines 15 to 256, line 1; vol. 2 at p. 134, lines 1-7.

After finding the letter, Mr. Muridan told Ms. Redl that their relationship was over, and that he would help her find comfortable new accommodations that he would pay for. RP vol. 2, p. 132, line 12 to p. 33,

line 17. As Mr. Muridan explained, he agreed to pay for Ms. Redl's housing because he wanted Donnie to have a nice place to stay when he was in her custody. RP vol. 2, p. 132, line 12 to p. 33, line 17.

In response, Ms. Redl angrily confirmed her pregnancy and stated that she was going to take Donnie away from Mr. Muridan. RP vol. 2 at p. 131, lines 14-16. RP vol. 3 at p. 253, lines 16-20.

Mr. Muridan and Ms. Redl permanently separated that same night. RP vol. 2 at p. 133, lines 21 -25.

March 6, 2015: Ms. Redl Files for DVPO

A few days later, on March 6, 2015, Ms. Redl filed for a restraining order. CP 3-17. Mr. Muridan was subsequently forced to move out of his house and live with a friend for the summer. RP vol. 3 at p. 262, line 21-22.

Mr. Muridan was not allowed to move back into his house until August 1, 2015. RP vol. 3 at p. 303, lines 10-11.

March, 2015: Ms. Redl Moves in With Mr. Sidell

Shortly after Mr. Muridan and Ms. Redl separated, Mr. Sidell rented an apartment in Tacoma. A few months later, he bought a house in University Place. RP vol. 1 at p. 50, lines 23-25. Thereafter, Ms. Redl permanently moved in with him. RP vol. 1 at p. 52, lines 7-8. Ownership of the house belongs equally to Ms. Redl and Mr. Sidell because it is their community property. RP vol. 1 at p. 70, lines 1-5.

Ms. Redl and Mr. Sidell were married, in December, 2015. RP vol. 1 at p. 65, lines 1-2.

Status of Parties at Time of Trial

Mr. Sidell has sufficient wealth that Ms. Redl no longer has to work, nor will she need to work in the future. RP vol. 1 at p. 70, lines 5-7.

Accordingly, at the time of trial, Ms. Redl was on leave from her teaching position with no plans to return. She was being supported by Mr. Sidell as a full-time stay at home mother for their new baby. RP vol. 1 at p. 52, lines 7-8; RP at p. 21, lines 8-11.

At the time of trial, Mr. Muridan's cancer was in remission, but he was not working. RP vol. 4 at p. 40, line 20 to p. 41, line 6; vol. 2 at p. 164, lines 13-14. He was supporting himself solely through his settlement with JAR Mgmt, which is discussed below. RP vol. 2 at p. 164, lines 15-18.

B. FACTS REGARDING SEPARATE PROPERTY AGREEMENTS

There were two basic agreements between the parties:

- a) Agreement to Trade Housing and Utilities for Insurance and Daycare Payments

As previously stated, the parties lived under an agreement in which Mr. Muridan paid for housing and utility expenses, and Ms. Redl paid for health insurance and child care expenses. See discussion, supra, pp. 3-6. This agreement was explicitly confirmed by Ms. Redl during trial:

Q [By Ms. Forrest] so you testified that, you know, he would pay the mortgage and utilities, you paid the medical insurance for Donnie and Don, correct?

A [By Ms. Redl] Correct.

Q And this was actually an agreement between the two of you to pay these debts, correct?

A Yes.

RP vol. 4 at p. 31, lines 4-10.

b) Agreement to Keep Income and Bank Accounts

The parties also had an agreement to keep their income and bank accounts separate from one another. As Mr. Muridan explained, all financial dealings between the parties were governed by the adage “*what is mine is mine, what is yours is yours.*” RP vol. 3 at p 315, lines 81-17.

As a result of these agreements, the parties never had any discussions or expectations about merging their finances. *Id.* Thus, Ms. Redl never offered to share her income with Mr. Muridan. RP vol. 2, at p. 150, lines 2-13. Likewise, Mr. Muridan never claimed a right to any of her income. RP vol. 3 at p. 247, line 4-5.

At trial, Ms. Redl confirmed that she never had any expectation in sharing in Mr. Muridan’s income or bank accounts:

Q. [By Attorney Forrest] When I asked you about your expectation to have access to his account, do you recall in your deposition stating, “No, I did not have that expectation?”

A. [By Ms. Redl] At the beginning, no.

Q. But at the time of the deposition when I asked you the question did you understand it as at the beginning or in the relationship?

A. I don't remember.

Q. You want to read page 13 of the transcript? Its lines 3 through 6. I asked, "Have the two of you ever discussed putting your income to one account, or having" -- and you replied, "No." I said, "Okay. Did you ever have the access to his account?" And you replied, "No. I didn't have the expectation."

A. No, I didn't have the expectation.

RP vol. 4, p. 30, line 13 to p. 31, line 3.

C. FACTS CONCERNING ASSETS AND DEBTS

1. Separate Bank Accounts (Including Timberland Bank Account)

Each party had separate bank accounts which the other party did not have access to. RP vol. 4 p. 30, line 13 to p. 31 line 3. Consistent with these facts, the parties did not combine or commingle their incomes. RP vol. 2 at p. 138, lines 4-17.

One of Mr. Muridan's separate accounts was a bank account at Timberland Bank. Ms. Redl's name was never on this account. RP vol. 4 at p. 34, lines 10.13. On the date the parties separated (February 27, 2014) Mr. Muridan had \$25,000 in this account. Findings and Conclusions at paragraph 9 (CP 19).

On the date of separation, Ms. Redl had significant savings. At trial, she testified that she paid to \$15,000 to her attorney. When asked about the source of this money, she simply replied "I had money." RP vol. 4, p. 35, line 10.

2. Only One, Short-Lived Joint Bank Account

The only joint bank account that both parties had access to was the Key Bank account that Mr. Muridan established in September, 2014, which was shortly before the parties permanently separated. See discussion, *supra*, pp. 15-15. Only Mr. Muridan's income – never Ms. Redl's income -- was deposited into this account. RP vol. 2 at p. 141, lines 1-17. Thus, there was no commingling of incomes in the Key Bank account.

3. No Commingling of Funds

The record does not reflect even a single instance where commingling of funds occurred. There was only one time where temporary commingling *possibly* could have occurred, but this was never confirmed at trial.

As previously stated, before filing for bankruptcy in 2013, Mr. Muridan gave Ms. Redl \$20,000 in cash to hold for him, and she may have deposited these funds into a bank account in her name. See discussion, *supra*, pp. 10-11. However, Ms. Redl did not testify as to what type of account she used, if any, e.g., savings or checking account. Nor did she testify that the \$20,000 cash that Mr. Muridan gave her was ever mixed or commingled with her own funds.

4. Real Property

Ms. Redl neither assisted nor offered to assist Mr. Muridan with his mortgage payments. This was true even when Mr. Muridan's mortgage became delinquent and he had to obtain a loan modification. RP vol. 3 at p.

389, lines 15-18; RP vol. 3 at p. 282, lines 2-9. Ms. Redl did not assist Mr. Muridan with his expenses for home improvement projects. RP vol. 2, at p. 155, lines 5-21.

Ms. Redl apparently owned a cabin in Leavenworth which was sold while she was living with Mr. Muridan. RP vol. 3 at p. 267, lines 14-19. Mr. Muridan did not know how Ms. Redl spent the sale proceeds. Id.

5. Retirement Accounts and Stocks and Bonds

Mr. Muridan periodically bought stocks and mutual funds, but Ms. Redl never contributed to these investments. RP vol. 2 p. 155, line 22 to p. 157, line 1.

Ms. Redl had had her own separate retirement account which she contributed to separately. RP vol. 2 at p. 150, lines 2-7.

The parties never discussed sharing their retirement accounts, nor did they ever discuss establishing a joint retirement account. RP vol. 2 at p. 150, lines 8-13

6. Cars and Boat

Ms. Redl had a boat and an automobile, both of which were apparently titled in her name. RP vol. 2 at p. 138, line 11-17; vol. 3 at p. 305, lines 25-25; vol. 3 at p. 390, lines 5-6. While Ms. Redl sold her car after giving birth to Donnie, the record is silent as to what she did with the sales proceeds. RP vol. 3 at p. 305, line 25.

Mr. Muridan owned his own separate vehicle. RP vol. 2 at p. 145, lines 10-11. After his son was born, Mr. Muridan bought a second car, which although it was separately titled in his name, he provided to Ms. Redl to use. RP vol. 2 p. 145, line 13 to p. 146, line 1.

Ms. Redl paid for her own car insurance. RP vol. 3 at p. 376, line 21.

7. Bills, Debts and Credit Cards

Ms. Redl had various debts, including at least one credit card account, a school loan, a loan for her boat, and some prior medical expenses, all of which she paid for by herself. RP vol. 2 at p. 138, lines 12-17; vol. 2 at p. 141, lines 18 to 25.

Once, when Ms. Redl was sitting at the dining room table with Mr. Muridan, she asked for his help in paying a few of her bills for that month, which he did. RP vol. 2 at p. 142, lines 1-10. This is the only instance in which either party paid for any portion of the other party's debts.

8. Safe deposit box

In 2011 the parties opened a safe deposit box, but no testimony was received as to what it was used for. RP vol. 3 at p. 271, lines 6-21.

9. Life Insurance and Wills

The record does not reflect whether Ms. Redl had a life insurance policy or a will.

Prior to meeting Ms. Redl, Mr. Muridan had a life insurance policy. RP vol. 2 at p. 150, line 14-15. After Donnie was born he also executed a will. RP vol. 2 at p. 153, lines 7-25.

After Donnie was born, Mr. Muridan added Ms. Redl as a beneficiary under both his life insurance policy and his will. As he explained, he wanted to ensure that if he died of cancer, Ms. Redl would have funds to take care of Donnie:

I was uncertain of what was going to happen to me. And again, you know, she's the mother of my child, and if -- I just wanted to make sure that Donald would be taken care of.

RP 2 at p. 153, lines 13-18. See also RP vol. 2 p. 151, lines 1-5; RP vol. 2 at p. 153, lines 7-25; vol. 3 at p. 309, lines 8-9.

D. FACTS REGARDING MS. REDL'S "CONTRIBUTIONS" TO MR. MURIDAN'S BUSINESSES

1. No Claim Made By Ms. Redl during Relationship

At trial, no testimony was offered by Ms. Redl to indicate that while she was living with Mr. Muridan, she ever believed that she had an interest in any of his businesses.

The record reflects that the first time that Ms. Redl ever claimed to have such an interest was after she permanently separated from Mr. Muridan and her lawyer filed a petition for dissolution. RP vol. 4 p. 32, line 3 to p. 33, line 2.

At the time of Ms. Redl's deposition (in October, 2015), she still did not know what claims, if any, she would make against Mr. Muridan's

businesses. RP vol. 4 p. 32, line 3 to p. 33, line 21d. As she explained, she and her attorney “were still discussing” the topic. Id.

2. Denial by Mr. Muridan that Ms. Redl Ever Had Any Interest in His Businesses

At trial, Mr. Muridan denied that Ms. Redl ever had any interest in his businesses or income. As he stated, the parties financial relationship was governed by the adage, “*what is mine is mine, what is yours is yours.*” RP vol. 3 at p. 315, lines 15-17.

Witnesses testified that Ms. Redl never had any involvement with Mr. Muridan’s businesses. RP vol. 1 p. 22, line 23, to p. 23, line 4; vol. 1 at p. 32, line 17 to p. 33, line 1. At no time did Ms. Redl ever participate in Mr. Muridan’s business meetings with advisors or attorneys. RP vol. 2 at p. 145, lines 1-9.

3. Testimony of Ms. Redl Concerning her “Contributions” to Businesses

At trial, Ms. Redl claimed to have “contributed” to Mr. Muridan’s businesses by doing things such as helping him pick out paint colors for one of his businesses and by attending an office Christmas party.

The entirety of Ms. Redl’s direct testimony concerning her “contributions” to Mr. Muridan’s businesses was as follows:

Q. [By Mr. Benjamin] Did Don consult you in your opinion in regards to his businesses?

A. [By Ms. Redl] Well, he started the businesses when we were together. Started with marijuana in the basement, I would – we picked out paint colors for the business. Went to Ikea with him and got the shelving, those kind of things.

He was the business side. I'm not a business person. But he did consult me with things, like how things looked, those kind of things.

Q. Did he talk to you about personnel issues occasionally?

A. Yes, he did.

Q. What's an example?

A. He was having a hard time with Sinead. People thought she was back on drugs. So he was asking me what to do about it. I mean, it's his stepdaughter. He didn't want to just fire her.

And so I gave him, you know, have your managers take over. That's what you pay them for. They're your managers. Have them give her guidelines and if she breaks them, it's not on you anymore.

Q. So kind of as a confidante and adviser?

A. Yeah.

I also went to the Christmas parties. I purchased gift certificates. He had me run into Asado's and get gift certificates for the managers, those kind of things.

I was there at the grand opening. I was there at one of his meetings that he had when he was first going to change over to the [retail marijuana business] with his partners.

RP vol. 3 p. 364, line 11, to p. 356, line 13.

During cross and re-direct examination, the only other “contributions” that Ms. Redl claimed to have made were:

- She once told Mr. Muridan that it was a “bad idea” for him to make a personal loan to Tyler Severy, his business partner at Fenceco. RP vol. 3 at p. 365, lines 14-16.
- She spent a few hours making some cookies, suckers and bracelets when Mr. Muridan opened Rainier Wellness Center. RP vol. 3 p. 392, line 12, to p. 393, line 13; and

- She accompanied Mr. Muridan to a business dinner with his partners at JAR Mgmt. RP vol. 3 p. 393, line 14 to p. 394, p.17.

E. DISPUTE AND SETTLEMENT CONTRACT WITH JAR MGMT

As shown by Exhibit 35, after disputes and counter-claims arose between Mr. Muridan and a co-owner of JAR Mgmt, Mr. Muridan entered into a settlement contract with JAR Mgmt.

The settlement contract was formally executed in late October, 2015, which was eight months after the parties had permanently separated. Exhibit 35 at p. 7.

The settlement contract had six provisions that are directly relevant to this appeal:

1. The parties exchanged **mutual releases** for each party's counter-claims against the other (Exhibit 35 at Section 2, p. 2);
2. Mr. Muridan gave up all his shares in JAR Mgmt, thereby **terminating all interest** in the company (Exhibit 35, Sec, 2, p. 1);
3. JAR Mgmt agreed to provide Mr. Muridan with **gross payments** which, **before deductions** (see below) would amount to \$700,000 (Exhibit 35 at Section 2, p. 2);
4. The payments would be spread out on an **amortized basis over five years** (Exhibit 35 at Section 2, p. 2);
5. From the gross settlement consideration, JAR Mgmt would **deduct attorney fees** that it had agreed to directly pay to Mr. Muridan's attorney (Scott McKay) (Exhibit 35, Section 1, p. 1);
6. Also from the gross settlement consideration, JAR Mgmt would deduct **the amount for a disputed \$75,000 tax lien** that had been assessed against the company by the State of Washington (Exhibit 35 at p. 1 (recitals) and at Section 2, p. 1).⁵

⁵ Pursuant to the settlement contract, Mr. Muridan was responsible for appealing a disputed tax liability of \$75,000. If he was unsuccessful in getting the tax lien released, then JAR Mgmt would pay the lien and deduct \$75,000 from Mr. Muridan's last year of payments

F. STATEMENT OF TRIAL PROCEEDINGS

1. Dates of Trial. A bench trial occurred between June 29, 2016 and July 7, 2016 before the Hon. Garold E. Johnson.

2. Relief Requested by Ms. Redl. Ms. Redl asked the court to find that she was in a committed intimate relationship, and to award her: 1) 50% of the value of Mr. Muridan's ownership interest in JAR Mgmt; 2) 50% of the value of his contract for his sale of the marijuana equipment and 3) 50% of the funds in his Timberland Bank Account. RP vol. 4 at p. 76, line 22 to p. 77 line 8; vol. 4 at p. 78, lines 22-25.

3. Decision of Court. The court summarily granted **all** of the relief requested by Ms. Redl.

Although no factual findings of any kind were made as to the value of Mr. Muridan's assets, the trial apparently concluded that the combined value of these assets was **\$775,000**. Findings of Fact and Conclusions, CP 19 at lines 22-24. Accordingly, it awarded Ms. Redl 50% of this amount, which was **\$387,500**. Dissolution Order, at paragraph 8 (CP 25).

In addition, the trial court assigned all future contract payments that Mr. Muridan was scheduled to receive from JAR Mgmt to Ms. Redl. Dissolution Order at paragraph 18, CP 26 at lines 20-21.

4. Findings of Fact. See CP 18-20. The trial court's obvious errors concerning findings of fact are discussed in the Argument sections of this brief, at pp. 49-50.

V. ARGUMENT

ASSIGNMENT OF ERROR ONE: The trial court did not understand or apply the mandatory “three-prong” analysis that is required in CIR cases.

1. Nature of “Three-Prong” Analysis Required By Supreme Court

The Washington Supreme Court has stated that in CIR cases, trial courts must use a “three-prong” analysis:

1. The trial court must determine whether there was a **committed intimate relationship**; and
2. If the trial court finds that such a relationship existed, then it must evaluate whether the property acquired during the CIR should be characterized as **“separate” property” or “community” property**; and
3. To the extent the trial court finds that there was community property, the trial court must review all relevant facts and provide for a **just and equitable distribution** of the property.

Connell v. Francisco, 127 Wn.2d 339, 349, 898 P.2d 831 (1995); *In re Marriage of Pennington*, 142 Wn2d 2d 592, 602, 14 P.3d 764 (2000); *Soltero v. Wimer*. 159 Wn.2d 428, 433, 150 P.3d 552 (2007).

2. The Trial Court Did Not Apply the Mandatory Three-Prong Analysis

The trial court was not aware of, nor did it apply, the mandatory three-prong analysis.

The trial court erroneously believed that once it found that a CIR existed, then no further inquiry was needed. Instead, it believed that it could immediately divide **all** property acquired during the CIR in whatever way it saw fit, including on a “50/50” basis.

The trial court's failure to understand the law is shown by its oral decision. See RP Oral Decision, p. 2 line 3 to p. 7, line 4.

As will be noted, the oral decision was entirely devoted to a **single question, namely, whether a CIR existed**. Once the trial court answered this question in the affirmative, **it did not undertake any further analysis**. Instead, it **instantly** ruled that Mr. Muridan's assets should be divided on a "50/50" basis.

This Court is asked to pay particular attention to the oral decision at page 7, lines 1-22. As will be seen, after finding that a CIR existed, the trial court instantly ruled that Mr. Muridan's assets should be divided on a "50/50" basis. It made this ruling without undertaking **any** further deliberations or analysis:

In the end, the Court does find that this is an equity relationship based upon those factors. Which leads us to how do we separate the assets at this time, how do we look at the assets that were acquired during marriage.

The bankruptcy in this case [can be used to identify what assets were] acquired during the marriage, and particularly the ones that were asked for the Court to look at for distribution, and that is the marijuana business and the related income from that business.

I do find that this was an asset acquired during this quasi marriage -- if I called it a marriage, my apologies -- but it was, indeed, an equitable relationship at that time. And I do find that it has to be divided or should be divided 50/50 between the parties; that's \$350,000 to the mother and \$350,000 to the father.

The sale of the equipment is the same analysis. It will be, indeed, split 50/50.

RP Oral Decision, p. 7, line 1 to line 24.

The “bottom line” is that the trial court only conducted analysis under the **first prong** of the mandatory three-part inquiry (determining whether a CIR existed). It **utterly ignored the second prong** (determining whether property acquired during the relationship should be characterized as separate property or community property). Likewise, it **utterly ignored the third prong** (considering specific facts to determine equitable division).

These deficiencies **were not cured** by the trial court’s written findings.

Although the Findings and Conclusions list Mr. Muridan’s assets as being “*quasi-community*” property,⁶ there is no indication that the trial court **ever** deliberated on the issue of whether Mr. Muridan’s assets should be characterized as community property or separate property (Prong Two of the three-prong analysis). Likewise, no findings of fact exist with respect to this issue. See Findings and Conclusions, at CP 19 lines 22-24

Similarly, no facts are described which would indicate what facts, **if any**, were relied upon by the trial court when selecting a “50”50” ratio for dividing the property, and not some other ratio (Prong Three of the three-prong analysis.). As will be noted, the findings only purport to recite the **factors – not the facts** -- that the court relied upon. See Findings and Conclusions, CP 20, lines 6-7.

CONCLUSION: The trial court did not apply the mandatory three-prong analysis that is required in CIR cases. This failure constitutes clear error.

⁶ See Findings and Conclusions, at CP 19 lines 22-24.

ASSIGNMENT OF ERROR TWO: The trial court erred as a matter of law in concluding that a committed intimate relationship existed on **August, 2014**

1. Summary of Appellant's Arguments

Mr. Muridan does not take a position as to whether a CIR existed for some portion of his relationship with Ms. Redl.

However, to the extent a CIR existed, it clearly ended before August, 2014, which is the date that Mr. Muridan first acquired his interest in JAR Mgmt.

Since property acquired after a CIR has ended is not subject to equitable distribution, the trial court erred in awarding Ms. Redl a 50% share of Mr. Muridan's ownership interest in JAR Mgmt.

2. Standard of Review

The question of whether a CIR exists presents a mixed question of law and fact. *Marriage of Byerley*, 183 Wn.App. 667, 686, 334 P. 2d 108 (2014). As such, a trial court's factual findings will be left standing so long as they are supported by substantial evidence. *Id.*⁷ However, the ultimate conclusion as to whether a CIR existed is a legal conclusion which is reviewed on a "de novo" basis. *Id.*

3. Argument as to Why a CIR did Not Exist

⁷ "Substantial evidence is "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." *Gormley v. Robertson*, 120 Wn.App. 31, 38, 83 P.3d 1042 (2004).

The Washington Supreme Court has identified various factors that are relevant for determining whether a CIR existed. See *In re Marriage of Pennington*, supra, 142 Wn.2d at 603-607. These factors are neither exclusive nor hyper-technical but rather, are a means for examining all relevant evidence. Id at 602. No one factor is more important than any other, and all factors must be considered as a whole. Id at 607.

“Continuous Cohabitation”

Although Mr. Muridan and Ms. Redl had a cold and barren relationship, it is undisputed that they continuously resided in the same house from 2009 until February, 2015.

“Duration” of Relationship

If the end point of the relationship is considered to be the date when the parties ceased living together (February 27, 2015), then the duration of the relationship was approximately six years. However, if the end point is considered to be the date when both parties ended all physical and sexual intimacy (in 2011), then the duration of the relationship was only two years.

“Intent of the Parties”

By the summer of 2014, both Mr. Muridan and Ms. Redl wanted out of the relationship, and were only living together for the benefit of their son.

Moreover, by the summer of 2014, Ms. Redl was fully enmeshed in an intimate relationship with John Sidell, the man who she would soon become pregnant by and leave Mr. Muridan to marry.

Clearly, the “intent” factor was not present in **August, 2014**, which was when Mr. Muridan acquired his ownership interest in JAR Mgmt.

“Pooling of Resources”

This factor was not met at any time in the relationship:

Income. The parties did not pool their income, but instead, always kept their earnings separate and distinct from each other. Neither party ever had **any** expectation of sharing in the other party’s income.

Living Expenses. The parties did not maintain a pool of commingled funds by which to pay for living expenses. Instead, living expenses were paid via pre-arranged and defined contributions from each party’s separate income. Under their agreement, Mr. Muridan paid for housing, utilities, cell phones, food, recreational activities and for vacations. Ms. Redl paid for health insurance and some daycare.

Debts. The parties did not pool funds to pay for each party’s separate debts, including mortgage payments, student loans, credit card debts and bank loans. When Mr. Muridan filed for bankruptcy, Ms. Redl did not assume responsibility for any of his debts.

Retirement and Checking Accounts. The parties had separate retirement and checking accounts, and did not commingle their income into each other’s accounts.

The only possible exception was in 2013 when Mr. Muridan declared bankruptcy and asked Ms. Redl to temporarily hold \$20,000 in cash for him.

However, no evidence was introduced to show that these funds were ever mixed with Ms. Redl's own funds. See discussion, *supra*, pp. 23-24. Thus, this Court can only speculate as to whether any commingling occurred.

Only One Short-Lived Joint Bank Account. The only joint bank account that the parties ever had was the Key Bank account that Mr. Muridan set up and allowed Ms. Redl to use in September, 2014, which was only a few months before the relationship permanently ended. Only Mr. Muridan's income – never Ms. Redl's income – was deposited into this account. No commingling of funds ever occurred with respect to this account.

Real Estate. Mr. Muridan owned the house on Lawrence Street which the parties lived in. Ms. Redl owned a cabin in Leavenworth. The record shows that each party clearly treated the other party's real estate as separate property. Neither party ever made any type of contribution (monetarily or otherwise) to the other party's property.

Transportation. The parties each had separate vehicles, title to which were in their separate names. Ms. Redl paid for her own car insurance.

Only One Jointly Owned Asset: Safe Deposit Box. The only asset that was ever jointly owned by the parties was a safe deposit box. There was no testimony as to who paid for the safe deposit box, or what it was used for.⁸

“Purpose of the Relationship”

⁸At trial, there was fleeting testimony concerning a timeshare vacation rental in Mexico which Mr. Muridan paid for, but apparently let lapse because it was a “bad idea.” See RP vol. 3 p. 305 at lines 17-21. The record is silent as to how it was titled.

In *Pennington*, the Supreme Court indicated that the following items should be considered under the “*purpose of relationship*” factor:

“Sex.” After 2011, there was a complete absence of any sex between the parties. Indeed, after 2011 the only person who was having sex was Ms. Redl, who was having sex with the man who she would become pregnant by and leave Mr. Muridan to marry, John Sidell.

“Companionship and Friendship”

No testimony was offered to show that Mr. Muridan and Ms. Redl ever enjoyed each other’s company. To the contrary, witnesses describe the relationship as being marred by frequent conflicts and the inability to communicate. While Mr. Muridan and Ms. Redl sometimes vacationed together, no testimony was presented to indicate what they did during these vacations, or whether they got along. Neither party testified as to any interests or hobbies that were jointly pursued, e.g., gardening, boating, cooking, music, etc.

“Love.” Conspicuously absent from the record is **any** expression by either party that they ever loved each other. Indeed, this Court is invited to conduct a key word search of the testimony of Mr. Muridan and Ms. Redl by inputting the words “*love*” or “*loved.*” As will be revealed, there is not a single instance in the record where Mr. Muridan or Ms. Redl testified that they ever loved each other.⁹

⁹ The only instance where one of the parties used the word “love” (or a similar expression) to describe his/her feelings for the other was in Mr. Muridan’s Facebook postings and in the

“Mutual Support and Caring.” There was no testimony to show that there was ever any meaningful level of mutual support and caring between the parties.

While Ms. Redl traveled with Mr. Muridan to his various surgeries, no testimony was provided as to what her role was during these trips. Did she nurture Mr. Muridan? Did she provide emotional support? Or instead, did she simply travel with him, enjoy the shopping, and nothing more? Since no testimony was provided in this area, this Court can only speculate as to the level and type of “support” that Ms. Redl provided during the surgeries.

The only other type of “support” that Ms. Redl claimed to have provided to Mr. Muridan was that she went to an office party and a business dinner with him, and also would “occasionally” provide opinions on matters such as what color to paint his business.

These limited and isolated instances of “support” do not describe the type of deeply supportive actions that are the earmarks of a truly committed relationship. Instead, they simply describe the type of actions that would be expected from a friend or roommate.

4. Anticipated Reply Arguments by Ms. Redl

It is anticipated that in her reply brief, Ms. Redl will argue that a CIR existed by pointing to the frenzied – if not crazy – pleas and actions taken by Mr. Muridan in the last few months that she lived in his house.

Valentine’s Day card he sent to Ms. Redl. However, these actions occurred **after** the relationship was effectively over and Mr. Muridan was making a frenzied “last ditch effort” to keep Ms. Redl from leaving his home. See discussion, *supra*, 13-15.

While such arguments will be fully addressed in Appellant's rebuttal brief, for now Appellant simply points out that these actions occurred at the very end of the relationship, after Mr. Muridan had suspected (and later confirmed) that Ms. Redl had formed an intimate relationship with another man. His actions constituted a desperate effort to keep Ms. Redl "happy," so that she would not follow through with her repeated threats to make him "a weekend father." Mr. Muridan's worst fear was losing his son.

CONCLUSION AND RELIEF REQUESTED:

To the extent that a CIR ever existed between the parties, it clearly had ended by **August, 2014**, which was the date on which Mr. Muridan acquired his interest in JAR Mgmt. Since a CIR did not exist in August, 2014, the trial court erred as a matter of law in subjecting the JAR Mgmt asset to equitable distribution.

This case should be remanded to the trial court with instructions to vacate the portion of the judgment relating to the JAR Mgmt asset.

ASSIGNMENT OF ERROR THREE: The trial court erred as a matter of law in concluding that Mr. Muridan's assets were "*quasi-community*" property rather than separate property.

1. Summary of Appellant's Arguments

The undisputed evidence shows that all of the assets which the court divided were Mr. Muridan's separate property. Accordingly, the court erred by subjecting them to equitable distribution.

2. Statement of Law

a. Only Community Property is Subject to Division

In CIR cases, only community property is subject to division. Trial courts do not have jurisdiction to divide separate property. *Soltero v. Wimer*, 159 Wn.2d 428, 434, 150 P.3d 552 (2007).

b. The Community Property Presumption can be Overcome by Proof that there was a Separate Property Agreement

Income or assets acquired during a CIR are presumed to be owned by both parties. However, this presumption can be overcome by clear and convincing proof that there was a separate property agreement. *In Re Marriage of Mueller*, 140 Wn.App. 489, 504, 167 P.3d 568 (2007).

c. Requirements for Enforcing Separate Property Agreements

Separate property agreements may be written or oral, and they may be explicit or implicit. See generally Wash. Practice, Vol. 19, Sec. 15-2 at p. 386.

In order to enforce a separate property agreement, there must be clear and convincing proof as to two elements of proof: 1) There was an **agreement** to treat property as separate property, and 2) The agreement was **observed during the relationship**. As this Court has explained:

A spouse seeking to enforce an agreement, whether oral or written, that purports to convert community property into separate property must establish with clear and convincing evidence both (1) the

existence of the agreement and (2) that the parties mutually observed the terms of the agreement throughout their marriage.

Marriage of Mueller, supra, 140 Wn.App. At 504.

d. Standard of Review

Trial court decisions as to whether property should be characterized as “separate” property or “community” property are reviewed under the same standard that applies to decisions as to whether a CIR existed. See discussion, supra, p. 32.

Thus, factual findings by trial courts will be left standing so long as they are supported by substantial evidence. However, the ultimate conclusion as to whether property should be regarded as “separate property” or “community property” is a legal conclusion which is reviewed on a de novo basis. *Marriage of Mueller*, supra, 140 Wn.App. At 503-504.

3. There Was an Enforceable Separate Property Agreement.

a) The Parties Had Clearly Agreed to Treat all Income and Bank Accounts as Separate Property

The evidence is clear, convincing and undisputed that the parties **did not** have any expectation that they would ever share in the other party’s income or bank accounts. As Mr. Muridan repeatedly testified, the parties had always agreed to honor the adage, “*what is mine is mine, what is yours is yours.*”

Ms. Redl **did not** contradict this testimony. Moreover, she **explicitly** confirmed that: 1) The parties had an agreement to fund living expenses via defined contributions from each party’s separate income, and 2) Neither party

ever had **any expectation** in sharing in the other party's income or bank accounts. See discussion, *supra*, pp. 21-22.

b) The Agreements Were Observed Throughout the Relationship

The evidence is also clear, convincing **and undisputed** that the parties kept their finances separate **throughout their relationship**.

While the number of facts that attest to this are too numerous to list, the salient facts can be summarized as follows:

- **No Commingling of Funds.** The parties deposited their income into separate bank accounts which the other party did not have access to. This included Mr. Muridan's account at Timberland Bank. The only exception to this was the short-lived Key Bank account which Mr. Muridan established a few months before the relationship permanently ended. However, only Mr. Muridan's income – never Ms. Redl's income -- was deposited into the account. Thus, no commingling of income ever occurred.¹⁰
- **No Pooling of Funds to Pay Living Expenses:** The parties did not combine or pool their income to pay living expenses. Instead, they paid for living expenses via pre-arranged and delineated contributions from their separate income.

¹⁰ There is no evidence that the \$20,000 cash which Mr. Muridan gave to Ms. Redl to hold prior to his bankruptcy was ever commingled with her money. See discussion, *supra*, p.11

- **Never Any Discussion about Merging Finances.** At no time did the parties ever discuss merging or combining their finances. Each party maintained his/her own retirement account.
- **Separate Debts.** Ms. Redl had monthly debts that were never assumed by Mr. Muridan. Likewise, when Mr. Muridan fell behind in his mortgage payments, Ms. Redl did not help him in any way. The same thing was true when Mr. Muridan filed for bankruptcy.
- **No Financial Contributions to Mr. Muridan's Businesses.** At no time did Ms. Redl ever contribute any money to Mr. Muridan's businesses, including Fenceco, JAR Mgmt, and Rainier Wellness Center. Mr. Muridan's business ventures were solely funded by his separate funds, never by Ms. Redl's funds.
- **Separate Titles Vehicles and Auto insurance.** Each party owned vehicles that were titled solely in their name. Ms. Redl paid her own car insurance.

CONCLUSION & RELIEF REQUESTED:

The undisputed evidence shows that: (a) the parties had an agreement to keep their finances separate; and (b) this agreement was observed throughout the relationship.

Since each of the three assets that the trial court divided should have been characterized as Mr. Muridan's separate property, the trial court lacked jurisdiction to divide those assets.

This case should be remanded back to the trial court with instructions to vacate all portions of the judgment which pertained to: 1) The Jar Mgmt asset; 2) The contract for the sale of marijuana equipment and 3) The Timberland Bank account.

ASSIGNMENT OF ERROR FOUR: When making its equitable distribution, the trial court abused its discretion by failing to consider the economic circumstances of the parties.

1. Summary of Appellant's Arguments

Before deciding upon an equitable distribution of property, the trial court was **required** to consider each party's health and economic circumstances. The trial court's failure to consider these facts constitutes clear error.

2. Standard of Review

Property distributions at the end of a meretricious relationship are reviewed for abuse of discretion. *Koher v. Morgan*, 93 Wn.App. 398, 401, 968 P.2d 920 (1998). An abuse of discretion exists where the trial court's discretion has been exercised in a manner that is untenable or unsupported by facts. *State v. Downing*, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004).

3. The Economic Circumstances of the Parties MUST be Considered by Trial Courts When Making Equitable Distributions

The economic circumstances of the parties (as described in RCW 26.09.080(4)) is an **essential** factor that **must** be considered by trial courts

when making equitable divisions of property. As the Washington Supreme Court has stated, this factor is of “paramount concern”:

[T]he long-standing rule that the economic condition in which a dissolution decree leaves the parties is a **paramount concern** in determining issues of property division and maintenance.

(Bolding and underlines added). *In the Matter of the Marriage of Washburn*, 101 Wn.2d 168, 161, 677 P.2d 152 (1984). See also: *In Re Marriage of Williams*, 84 Wn.App. 263, 268, 927 P.2d 679 (1996) (“The court’s paramount concern is the economic condition in which the dissolution decree leaves the parties”)

4. The Trial Court Abused its Discretion by Failing to Consider Mr. Muridan’s Health and Ability to Support Himself

The trial court **did not** even remotely consider the economic circumstances of the parties before deciding upon an equitable distribution of Mr. Muridan’s property. This is plainly shown by the trial court’s oral decision:

I do find that [the JAR ownership] was an asset acquired during this quasi marriage -- if I called it a marriage, my apologies -- but it was, indeed, an equitable relationship at that time. And I do find that it has to be divided or should be divided 50/50 between the parties; that's \$350,000 to the mother and \$350,000 to the father.

The sale of the equipment is the same analysis. It will be, indeed, split 50/50. And then there is the one bank account that, likewise, it was commingled; that will be split 50/50 as well.

RP Oral decision, p. 7, lines 12 -22

The trial court’s disregard of the economic circumstances of the parties is also shown by its Findings and Conclusions. While the findings

contain the bald and pro forma statement that the court “*considered*” the “economic circumstances” of the parties, there **are no findings whatsoever** to show **what facts, if any**, were actually considered by the trial court.¹¹

5. The Trial Court’s Failure to Consider the Economic Circumstances of the Parties was Enormously Prejudicial to Mr. Muridan

The trial court’s failure to consider Mr. Muridan’s health and future economic outlook was highly prejudicial to Mr. Muridan. This is because the parties had dramatically different economic circumstances.

At the time of trial, Ms. Redl was only 42 years old and in excellent health. Significantly, she no longer had to work because her new husband was wealthy. Accordingly, she could afford to be a full-time stay at home mother.¹² Moreover, Ms. Redl had the option of returning to the teaching profession at any time. Her economic circumstances were comfortable and secure.

In contrast, Mr. Muridan had Stage Four prostate cancer which, although it was in remission, had spread to his lymph nodes. He was not working, and unlike Ms. Redl, he did not have a professional career or wealthy partner to support him. To the contrary, his only source of income was his contract with JAR Mgmt and the proceeds from the sale of his marijuana equipment. While Ms. Redl’s financial outlook was secure, Mr. Muridan’s financial outlook was grim.

¹¹ See Findings and Conclusions, CP 20, lines 6-7.

¹² See discussion, *supra*, pp. 19-20.

Clearly, the trial court was required to consider these facts before making a decision about equitable distribution. Its failure to do so was unconscionable.

RELIEF REQUESTED:

To the extent that this Court disagrees with Appellant and finds that the trial court did have jurisdiction to divide Mr. Muridan's separate property, it must nonetheless vacate the trial court's decision because the trial court failed to consider the economic circumstances of the parties.

The case should be remanded with instructions to the trial court to receive testimony concerning the health and economic circumstances of the parties before it makes any new decision regarding equitable distribution.

ASSIGNMENT OF ERROR FIVE: The trial court's valuation of Mr. Muridan's assets was contrary to the undisputed evidence.

1. Duty to Value Assets and Standard of Review

In dissolution cases, courts have a duty to properly value assets before dividing them. *Greene v. Greene*, 97 Wn.App. 708, 986 P.2d 144 (1999).

The valuation of property is a material fact and is reviewed under a "substantial evidence" standard. *In Re Marriage of Rockwell*, 141 Wn.App. 235, 170 P.3d 572 (2007).

2. The Trial Court's Valuations Were Contrary to the Evidence

Although the trial court valued Mr. Muridan's ownership interest in JAR Mgmt as being worth \$700,000, **it is obvious the trial court never bothered to read the contract.** See Exhibit 35.

The provisions of the settlement contract makes clear that Mr. Muridan's ownership interest in JAR Mgmt was worth far less than \$700,000. As provided in the contract:

1. The settlement contract was for **BOTH** Mr. Muridan's wrongful termination claims **and** his ownership interest in JAR Mgmt. See Exhibit 35 at p. 1 (recitals);
2. The gross settlement consideration of \$700,000 was **subject to deductions** for: (1) a \$75,000 tax liability and (2) for JAR Mgmt's direct payments to Mr. Muridan's attorney. See Exhibit 35 at p. 1 (recitals), pp. 2-3 ("Consideration");
3. The settlement funds were not paid via a lump sum. Instead, they were to be paid on an **amortized basis over term of five years**. See Exhibit 35 at p. 2 ("Consideration")

Obviously, when each of the provisions are considered, the **present cash value**¹³ of Mr. Muridan's assets was clearly far less than the \$775,000 value assigned by the trial court.

VI. CONCLUSION AND RELEIF REQUESTED

The trial erred as a matter of law in subjecting Mr. Muridan's assets to equitable distribution because: 1) No CIR existed; and 2) the assets were his separate property.

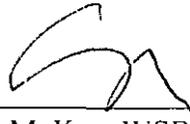
This case should be remanded to the trial court with instructions to vacate the portions of the judgment which pertain to: 1) Mr. Muridan's JAR

¹³ Where monetary assets include future payments, trial courts must discount the assets to present cash value. See: *In Re Marriage of Pilant*, 42 Wn.App. 173, 709 P.2d 1241 (1985). The trial court was required to do this for both the JAR Mgmt asset and the contract for sale of marijuana equipment.

Mgmt asset; 2) His contract for the sale of marijuana equipment and 3) His bank account at Timberland Bank.

This court should award such costs and attorney fees as may be permitted by statute or court rule.

Respectfully submitted this this 25th day of April, 2017



Scott McKay, WSBA No. 12746
Attorney for Appellant Don Muridan

CERTIFIED SERVICE OF CORRECTED BRIEF

Court of Appeals Case Number: 49436-1-II

To the Clerk of the Court of Appeals:

On the April 26, 2017, I personally ~~serve~~ a copy of Appellant's corrected brief upon the attorney for the respondent, Jason Benjamin. Service was made at 1201 Pacific Ave, Suite C-2, Tacoma, WA 98402.

I certify under the penalty of perjury under the law of the State of Washington that the foregoing is true and correct.

Dated this 26th day of April, 2017 at Seattle, WA



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