

No. 50979-2-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

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DIVISION II
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STATE OF WASHINGTON
CLERK

CATHERINE S. SHUBECK
Respondent

v.

JOHN R. SHUBECK and SHELLY A. WILLIAMS
Appellants

AMENDED BRIEF OF APPELLANTS

John R. Shubeck
Shelly A. Williams
Appellants, Pro Se
1350 Pilchuck Heights
Fox Island, WA 98333
Tel: 253-303-0135

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	The trial court erred in concluding that all the property in the marriage is community property by (1) not tracing the funds that purchased each asset, and (2) voiding the parties' Prenuptial Agreement and Separate Property Agreement that characterized the property as separate, and (3) by concluding that because John's name had been on titles, that he was the joint owner of assets.	
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C. FRAUDULENT TRANSFER

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The trial court erred in concluding that John and Shelly were guilty of fraudulent transfer when:

1. By tracing Shelly's separate funds, each of the assets name in the lawsuit were Shelly's separate property;
2. There was a Separation Agreement designating the 2003 Lexus as Shelly's property;
3. There was a valid Prenuptial Agreement and Separate Property Agreement naming the assets as Shelly's property, either directly or by provision;
4. John and Shelly divided these assets according to these agreements at their time of separation, proving their intent never wavered on the separate property characterization established at the time they were purchased;
5. That when Shelly corrected titles, John actually transferred debt of \$79,083.38 to Shelly; therefore, no consideration was required; and
6. Since John and Shelly are convinced that these assets are, in fact, Shelly's separate property, the correction of titles was done in good faith.

D. SCOPE

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The trial court erred in not identifying the value of the assets at the time of the transfer in order to memorialize the judgment limits. The trial court further erred in not identifying the scope of Shelly's personal exposure with her separate property in the future.

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The trial court erred in awarding fees when the court itself concluded that this trial "did not need to happen." The court further erred in awarding exorbitant attorney fees that were the result of Cathy endlessly protracting litigation and not cooperating with discovery and appearing for her deposition.

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I. INTRODUCTION

Catherine Shubeck's ("Cathy") fraudulent transfer lawsuit is based on unpaid alimony that was reduced to a judgment against John Shubeck ("John"). Cathy named Shelly Williams ("Shelly") as a co-defendant, as she and John were formerly married and were legally separated at the time Cathy's case was filed. Central to the lawsuit was whether the property named was Shelly's separate property or whether it was community property. In order for the trial court to conclude that the property was community and therefore, a fraudulent transfer occurred, the trial court had to:

1. Set aside all the tracing provided to the trial court demonstrating that Shelly purchased each of the named assets from her separate bank accounts; and
2. Void John and Shelly's valid Prenuptial Agreement executed on August 1, 2009 and John and Shelly's valid Separate Property Agreement; and
3. Ignore that John and Shelly were not yet Washington residents when Shelly bought her home at 809 6th Lane, Fox Island, Washington, ("6th Lane Home") using only her separate funds from her New Jersey bank; and
4. Ignore that Shelly brought over one million dollars of separate funds and assets to Washington State from New Jersey from which she purchased the assets named in the fraudulent transfer lawsuit; and
5. Ignore that John and Shelly were legally separated prior to Cathy filing her lawsuit for fraudulent transfer.

The trial court misapplied the law to this case, cited unrelated case law, and ignored case law that supported that the assets named in the lawsuit were Shelly's separate property. The trial court concluded that *all property*, including Shelly's funds earned

prior to marriage and moving to Washington, was community property.¹ This is the primary claim of error on appeal. Underlying the trial court's conclusion that Shelly's separate property was community property of the marriage were additional errors including voiding John and Shelly's valid Prenuptial Agreement and Separate Property Agreement and rejecting Shelly's ability to trace the purchase of her separate property to her separate bank accounts.

The secondary claim of error on appeal is that the trial court concluded that Shelly did not provide the "reasonably equivalent value" when John "transferred" property to her. Had the trial court properly identified the value of each of the assets, the trial court would then have to acknowledge that the property named in the lawsuit was underwater in October 2012; therefore, John "transferred" debt to Shelly. Consequently, no consideration was required when Shelly corrected her titles.

The tertiary claim of error on appeal is that the trial court failed to identify the value of the assets "fraudulently transferred" at the time titles were corrected.² By failing to do so, the trial court neglected to provide scope around any future judgments, leaving Shelly liable for future payment of judgments should John get behind in paying alimony in the future.

Prenuptial Agreement:

John and Shelly met in New Jersey in 2004. Once entered into a domestic partnership in 2005, they discussed their intention to keep all property separate. John and Shelly married late in life (in their mid-50s) after having been married before and

¹ CP 241, Conclusion of Law 3

² RCW 19.40.081(3) if the judgment under subsection "2" of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

raising children from previous marriages. What they acquired prior to their marriage, and what they acquired individually thereafter, was the rightful inheritance of each of their respective children. Shelly had a very successful career as an executive in human resources. She was an avid saver and investor. John, on the other hand, had struggled financially throughout the duration of his marriage with Cathy despite his successful career in technology. Because of the disparity in their wealth, John and Shelly especially wanted to preserve Shelly's assets for the future inheritance of her own three children.

Shortly after John began dating Shelly, his ex-wife, Cathy, drove by Shelly's home, curious as to who this new woman was in John's life. Cathy saw Shelly's executive home and labelled her "The Million Dollar Tramp."³ After recognizing Shelly's wealth, Cathy filed a Motion for Changed Circumstances, seeking to double her support from John based on Shelly's income and assets.⁴ The New Jersey Court denied Cathy's motion. Because of Cathy's filing in 2005, John and Shelly each consulted an attorney, as they were engaged and planned to marry. Paramount on their minds was to find a way to protect Shelly's assets from Cathy. Both attorneys suggested they postpone their marriage until John's youngest son graduated from high school, at which time, John's requirement to pay support ended. They postponed their marriage until November 20, 2009. Both attorneys also directed John and Shelly to execute a Prenuptial Agreement prior to marrying in order to protect Shelly's assets, as she had over a million dollars in assets, and John had few assets

³ CP 164-166

⁴ CP 164-166

and significant debt.⁵ John and Shelly took the advice of counsel and executed a Prenuptial Agreement on August 1, 2009, three months prior to their marriage.⁶

John and Shelly identified their assets in both their Prenuptial Agreement and in their Separate Property Agreement,⁷ proving that their intent was to keep the separate property characterization throughout their marriage. They never wavered from this intent. At the time they legally separated in March 2016, they divided their assets as prescribed by these contracts.⁸

Assets named in this Lawsuit:

The assets named in this lawsuit that Cathy alleges were fraudulently transferred were purchased by Shelly either shortly before or shortly after John and Shelly moved to Washington, except for the 2003 Lexus ES300, which was granted to Shelly by her employer in 2008. Shelly bought assets with funds from her separate bank account, money she brought to Washington from New Jersey. From September 23, 2010 – April 7, 2011, Shelly allowed John on title to:⁹

1. Residence at 809 6th Lane, Fox Island, WA 98333 (“6th Lane Home”)
2. 2005 Shoreland’r Boat Trailer
3. 2006 Dodge Ram Pickup Truck

Cathy identifies other assets in her lawsuit (Property at 1350 Pilchuck Heights, Fox Island, WA, and 2005 Regal Cruiser) but those assets were only titled in Shelly’s name; consequently, there is no allegation that they were fraudulently transferred.

⁵ CP 164-175

⁶ EX 101

⁷ EX 50

⁸ EX 34

⁹ CP 175

Shelly believed her assets were safe from Cathy once John no longer had a requirement to support her, so she relaxed her rigorous protection and allowed John's name on title. John and Shelly knew whose property it was and they were comfortable that even though Shelly temporarily allowed John's name on title, their Prenuptial Agreement and the fact that Shelly could trace each purchase to her separate bank accounts ultimately protected Shelly's property as her separate assets. While Cathy filed a motion for a new award of alimony in May 2011, John and Shelly were convinced that she would not be granted a new award because of Cathy's unclean hands. She committed identity theft and fraud, was arrested, and in civil court, John was awarded a judgment against Cathy for more than \$6,000, a debt she never paid. John's attorney advised that Cathy was prohibited from seeking monetary relief under these circumstances. However, when the New Jersey Court unpredictably signed a new order of support on September 27, 2012, Shelly made the decision to correct the titles of her separate property to ensure the protection of her property for herself and for her children's future inheritance.

John and Cathy's Plenary Hearing, Morris County, New Jersey:

Cathy repeatedly asserts that the Plenary Hearing on September 27, 2012 was the motive for the alleged fraudulent transfer. The Plenary Hearing was the impetus for Shelly to take steps to ensure her separate assets were protected; however, there was no fraudulent transfer as John cannot transfer assets that did not belong to him.

Per John and Cathy's original Property Settlement Agreement, John's requirement to pay support ended when their youngest child graduated from high school, June 2010. Cathy filed a motion for a new alimony order (among other

motions) in May 2011. After months of delays that were the result of Cathy refusing to cooperate with discovery, endless letters of deficiency from John's counsel to Cathy, numerous emergency hearings initiated by Cathy, and \$65,000 in his own attorney fees, John had to release his counsel in August of 2012 because he was out of cash. John sought a timely adjournment September 9, 2012 because over 40% of Cathy's requested discovery had not yet been produced, which resulted in John filing a Motion to Compel Discovery, with a return date of September 21, 2012. Unfortunately, his Motion for Adjournment was sent to the wrong judge by the intake clerk and was not discovered until weeks later, just four days prior to the hearing. In the interim, Cathy never served John or the court the requisite paperwork including a trial brief, a witness list and an exhibit list, all required by court order. It appeared that the Plenary Hearing would be adjourned. However, the afternoon of September 26, 2012, the day before the scheduled hearing, John discovered that Judge Maenza intended to move forward with the Plenary Hearing. John contacted Judge Maenza directly, notifying him that Cathy had not filed the required trial papers and that he had not been served. The judge denied John's request for an adjournment, stating that it was not "timely" despite the fact that John's formal request was misplaced by the court intake clerk. John asked that he then be allowed to appear telephonically from Washington since the hearing was just hours away. Judge Maenza denied that motion as well. The judge forged ahead with the Plenary Hearing despite the complete and utter chaos caused by Cathy by not cooperating with discovery and not serving the court or John the requisite documents. Cathy attended the hearing where she committed fraud in representing that her living expenses jumped so extraordinarily as

to warrant an 830% increase in alimony. And this was after two of their three children were emancipated and her living expenses dropped! While she only provided proof of her current living expenses at **\$1,900** per month, she claimed her living expenses were **\$5,700** with no documentation and without John present to challenge her claims. John's alimony order jumped from the **\$7,500** that he paid from 2001 – 2011 per year to **\$60,000** per year with no showing of changed circumstances. And that alimony order was permanent. An automatic garnishment was established through New Jersey Support Enforcement at that time.

The judge had a year's worth of documentation on the record that disputed Cathy's assertions, yet the judge issued an Order of Default, giving Cathy everything she sought despite the overwhelming evidence in the record that she committed fraud. The judge's motivation was later discovered. John released his original attorney, who, it turned out, was a close friend of the judge and that attorney was bitter that John terminated him. From that moment forward, every decision went against John. Prior to John releasing his attorney, Judge Maenza directly told Cathy's attorney at the August 5, 2011 hearing, "Your client doesn't have the case she thinks she has!" and mocked other motions by Cathy during the proceedings, indicating how ridiculous he found them; later, after John terminated his attorney, this same judge granted her every single motion regardless of how much it violated John and Cathy's Property Settlement Agreement, case law, and common sense. Judge Maenza has been a controversial judge on the bench in Morris County for the way in which he treats litigants; he was disciplined and removed from the bench in Morris County for one year for the way in which he treated another male litigant. He subsequently was

denied tenure due to his unprofessional conduct in family law court. Over vehement objections, Judge Maenza was recently reappointed to the bench by Governor Chris Christie. This information is public record and documented on the Internet.

John filed the appropriate Motion for Reconsideration and an appeal, believing that at some point a court would recognize how unfairly he had been treated. Every litigant should be granted an opportunity to be heard. This did not happen. The appellate court simply parroted the biased statements of Judge Maenza.¹⁰

Shelly's Decision to Correct Titles to her Separate Property October 2012:

Since it was Shelly's decision to correct the titles to her own property, it is important to understand why she made that decision in October 2012. Once Shelly witnessed the horrific legal nightmare in New Jersey, she knew that she needed to correct titles to her own separate property to ensure her assets were safe. This was exclusively Shelly's decision to go to the Pierce County Auditor's Office and correct each of her titles; John had no input into Shelly's choice. They were her assets so there was no question as to her right to protect what belonged to her.

Protecting Shelly's assets in October 2012 was a prudent decision and it was the right choice. Shelly's decision to correct her titles had nothing to do with committing fraudulent transfer in order to prevent Cathy from receiving her alimony. Shelly made the decision for just one reason - it was to retain her separate property for herself and for the future inheritance of her children.

John's Retirement from EMC January 2015:

After years of fighting and getting no relief from the court, John made the decision to retire from EMC after 25 years of service. John wanted to find a way to

¹⁰ EX 55

either succeed in negotiating a fair alimony amount directly with Cathy or bring the case to Washington and have it litigated here. John sent a letter to Cathy's attorney outlining his reason for choosing to retire, as follows:¹¹

The Order of Default resulted from you and your client's refusal to:

1. comply with court rules;
2. agree to an adjournment when you were both aware that you had not produced discovery;
3. agree to an adjournment when you knowingly had not served me the court-ordered documents for the pending hearing; and
4. put accurate facts on the record during the plenary hearing.

I had to decide if it is reasonable to comply with the court order to pay alimony in light of these violations. Having no other recourse for a fair and equitable outcome, I chose to retire.

Since 2012, John tried everything possible to find a just and fair resolution but was met with resistance from the NJ court and Cathy. When John retired from EMC, Cathy predictably sought intervention from the New Jersey court. John did not respond to the mail he received from Cathy's attorney because merely going back to a New Jersey court for enforcement would not resolve the fact that John had never been allowed to participate in the hearing that established the Order of Default. Instead, John sought to negotiate a settlement through Cathy's new attorney, Robert Correale. While Mr. Correale remained silent regarding John's multiple contacts in the timeline he provided to Cathy for trial ¹²(Cathy asserts John absconded), Mr. Correale was not presented as a witness at trial where under cross examination John's communications with Mr. Correale would have been revealed. Mr. Correale's timeline only reflects efforts made by Cathy to continue to perpetuate the fraud she committed in obtaining \$60,000 per year for life alimony order. They were at an impasse. Cathy brought her case to Washington. John was relieved, believing that this could be now litigated in a

¹¹ EX 40, CP 208-209

¹² EX 57

Washington court; unfortunately, John learned that this is not possible unless Cathy is willing to transfer jurisdiction to Washington.¹³

The basis for Cathy's claim of Fraudulent Transfer is not that Shelly corrected titles on her assets in October 2012. Cathy's ability to receive alimony was not hindered or delayed from Shelly correcting her titles. Cathy continued to receive alimony undisrupted for years thereafter. Her claim is really a direct result of John's retirement three years later because when he retired, her alimony stopped. However, there were no assets transferred either shortly before John's retirement or since his retirement. Cathy had no judgment until March 7, 2016. Cathy discovered just one month later, in April 2016, that John returned to work for a new employer (John's employment with IBM began February 2016). Rather than updating New Jersey Support Enforcement with John's new employer and continuing the garnishment process that was already in place,¹⁴ she filed a wage garnishment through Davies Pearson, who immediately began collecting through John's employer, and she filed the Fraudulent Transfer lawsuit, and then attempted to orchestrate a correlation with Shelly correcting her titles nearly four years earlier. The correction of titles was completely unrelated to John's retirement from EMC. John's decision to retire was prompted by just one thing – his desire for justice. While it made him uneasy and was not a decision he took lightly, he had to find a way to get Cathy to negotiate or get the case before a judge who could fairly evaluate it on the merits. To date, this has never happened. That Order of Default is still in effect today, is permanent, and

¹³ CP 208 - 209

¹⁴ In New Jersey, garnishments are automatic when support is ordered. If an obligor is ever delinquent, New Jersey Support Enforcement is authorized to collect any money that is owed beyond the original order of support. There are no fees for this service. Payment to the obligee is done by direct deposit after each pay period. The trial court called New Jersey to confirm this information.

John is paying and current despite the injustice. While John's decision to retire was made because he believed he had no other alternative to seek justice, it is by no means suggestive of fraudulent transfer.

Throughout the Findings of Fact and Conclusions of Law, the trial court echoes Cathy's claims that the September 27, 2012 Plenary Hearing was the motivation for the alleged fraudulent transfer. Despite the shock and injustice of the Order of Default:

1. John paid everything awarded by the court, approximately \$250,000, paid for from his retirement account; and
2. John was current in his required support payments and remained current for several years thereafter.

Had John's intent been to engage in a fraudulent transfer, he would have taken the money from his retirement account and hid it so that Cathy would not be paid. But he did not do that. He paid everything ordered by the court. That is not the behavior of someone who engaged in fraudulent transfer.

Since then, John's payments to Cathy as a result of the Order of Default in 2012 total more than a million dollars. **That is why John has no assets.** This fact runs contrary to Cathy's allegations that John has no assets because he engaged in fraudulent transfer.

Cathy alleged that John and Shelly's legal separation was a continuation of fraudulent transfer despite the fact that their separation occurred nearly four years after Shelly corrected her titles. Cathy pointed to the few assets John retained following his separation from Shelly as proof of fraudulent transfer, ignoring that

John had nearly no assets when he met Shelly, ignoring that John was in severe debt, ignoring that John was fully supporting Cathy and their three children throughout these years, and finally, ignoring that Cathy was the primary benefactor of John's income, savings, and his 401K retirement account that was liquidated to pay the alimony awarded her by the Order of Default.

In summary, John and Shelly entered into a valid Prenuptial Agreement on August 1, 2009 in New Jersey. This agreement was entered into when both parties were under the impression that in June 2010 any requirement to pay support to Cathy was over. Their Prenuptial Agreement was entered into a full three years before the Order of Default was entered by the New Jersey court. John and Shelly exercised every reasonable prudent action to retain the separate property characterization of their respective assets. In Washington State, if having a Prenuptial Agreement, a Separate Property Agreement, and maintaining separate bank accounts does not preserve the separate characterization of funds and assets, what is left for a married couple to do?

II. ASSIGNMENTS OF ERROR AND ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Assignments of Error

The trial court erred in: Entering Findings 1, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 32, 33, 35, 39, and 40 because those findings were not supported by substantial evidence.

The trial court erred in: Entering conclusions 2, 3, 4, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 because those conclusions were not supported by substantial evidence.

The trial court further erred in:

1. Only reducing the overall award for extraordinary attorney fees by \$6,000.
2. Denying John and Shelly's Motion for Reconsideration and Amendment of Judgment.
3. Denying John and Shelly's Motion for Clarification.

B. Issues Pertaining to Assignments of Error

1. Whether the trial court erred in neglecting to note that Shelly sold John *only 50%* of the equity in the 2003 Lexus ES300 in 2008 and that equity was consumed by October 2012? Finding 4.
2. Whether the trial court erred in not quoting the exact provision, which states:
"FURTHERMORE, the individual savings and checking accounts of both John Shubeck and Shelly Williams will be retained as their separate and distinct accounts, not to be co-mingled and treated as a joint asset," Finding 7a.
3. Whether the trial court erred in neglecting to include the full statement, which states that any homes owned now and in the future are the separate property of Shelly and will not become a joint asset of the marriage. Finding 7d.
4. Whether the trial court erred in omitting the following provision of the Prenuptial Agreement, as it governs the characterization of assets purchased during their marriage:
"FURTHERMORE, any individual purchases made during the marriage will be the separate property of the party who paid for the asset." Finding 7.

5. Whether the trial court erred in stating that John and Shelly failed to abide by the terms of the Prenuptial Agreement when no evidence was admitted at trial in support of this finding? Finding 8.
6. Whether the trial court erred in finding that John and Shelly commingled funds extensively and used funds in those accounts to make joint purchases when all bank records admitted at trial show that John and Shelly ONLY maintained separate bank accounts throughout their marriage and as a result, purchases made from those separate bank accounts became the separate property of the party who purchased the asset? Finding 8.
7. Whether the trial court erred in finding that John transferred his “interest” in the Lexus ES300 to Shelly when he did not have any interest in that asset? Finding 8.
8. Whether the trial court erred in finding that John’s funds were used to pay for debts and liabilities that were alleged to belong to Shelly when no evidence was admitted at trial demonstrating that John ever paid for a debt of Shelly? Finding 8.
9. Whether the trial court erred in finding that Shelly was not the sole owner of the homes she purchased after marriage when Shelly proved ownership by:
 - a. Tracing her separate funds she brought from New Jersey to the purchase of the 6th Lane Home; and
 - b. Tracing her separate funds to the purchase of the property at 1350 Pilchuck Heights, Fox Island, WA (“Pilchuck Property”); and

- c. Establishing the character of her assets as separate on the date of acquisition of both properties; and
 - d. Identifying Shelly as the sole owner of any homes acquired during their marriage in their Prenuptial Agreement? Finding 8.
10. Whether the trial court erred in characterizing the money John paid toward expenses as “transfers” rather than simply noting that John contributed toward living expenses, akin to paying rent, and had been since 2006? Finding 9.
 11. Whether the trial court erred in its mischaracterization of purchases as a “joint purchase” – see 9 above? Finding 10, 11, 12.
 12. Whether the trial court erred in finding that John and Shelly decided to secure the various assets “they” had purchased by “transferring” title to Shelly in order to keep them out of the reach of Cathy? Finding 16.
 13. Whether the trial court erred in finding that John quit claimed his interest in the 6th Lane Home to Shelly for no consideration when John had not made any contribution to the purchase of this home – see 9 above? Finding 17.
 14. Whether the trial court erred when it stated that there was community equity in the 6th Lane Home for reasons outlined in 9.a.? Finding 17.
 15. Whether the trial court erred in omitting that John’s traceable contribution in the 2006 Dodge Ram Truck was \$5,000? Finding 18.
 16. Whether the trial court erred in representing that John “transferred interest” to Shelly when the title was signed over on the 2003 Lexus ES300? Finding 22.
 17. Whether the trial court erred in finding that after these “transfers” that John had virtually no assets left when John did not own those assets? Finding 23.

18. Whether the trial court erred by omitting that John had no financial interest in the Pilchuck Property when the evidence shows that Shelly paid for this property from her separate money market bank account? Finding 24.
19. Whether the trial court erred in its finding that Shelly purchased the property for \$180,000 when Shelly paid \$185,000? Finding 24.
20. Whether the trial court erred in suggesting that John has any financial interest in the Pilchuck Property, for reasons outlined in 18? Finding 25.
21. Whether the trial court erred in finding that the Pilchuck Property is now valued at \$1,000,000 when there was no evidence presented as to its current value by exhibit or by a witness at trial? Finding 25.
22. Whether the trial court erred in finding that because there was a Home Equity Line of Credit on the 6th Lane Home that this means John made financial contributions when Shelly paid all the costs for this line of credit? Finding 25.
23. Whether the trial court erred by stating that “from August 2015 through September 2016, he (John) began to almost exclusively deposit his paychecks into Ms. Williams’ bank account, which was different from their previous practice where Mr. Shubeck would transfer smaller sums of money to her on a monthly basis when this is not supported by the 3,000 pages of banking records admitted at trial? Finding 32.
24. Whether the trial court erred in stating that Cathy was unable to collect on the arrears from New Jersey when all that was required to resume her garnishment was for Cathy to make a phone call to New Jersey Support Enforcement telling them where John was now working? Finding 33.

25. Whether the trial court erred when it found that John and Shelly's new Separate Property Agreement "purported" to make Shelly the separate owner of the assets named in this lawsuit, when John and Shelly's Prenuptial Agreement from August 1, 2009 already established the characterization of her property as her separate property as did tracing the payment for those assets to Shelly's separate bank accounts? Finding 35.
26. Whether the trial court erred in stating that John and Shelly make equal use of the assets described above and carry on a marital relationship when there is no evidence that supports that conclusion? Finding 39.
27. Whether the trial court erred in only addressing the wage garnishment process in Washington, ignoring that Cathy had the option to use New Jersey's, which is free and collects funds in real time and passes those funds to Cathy electronically, an effortless automated process? Finding 40.
28. Whether the trial court's erred in concluding that Shelly's separate property is community property of the marriage when:
 - a. Every asset purchased is traceable directly to Shelly's separate bank accounts, which were her separate funds from the more than \$1,000,000.00 she brought with her from New Jersey on September 24, 2010, after Shelly purchased the 6th Lane Home and 6 months before Shelly purchased the boat and the truck
 - b. Their Prenuptial Agreement and Separate Property Agreement both state these assets are Shelly's assets? Conclusion 2, 3.

29. Whether the trial court erred in concluding John and Shelly commingled their funds and that this violated their Prenuptial Agreement? Conclusion 2 and 3.
30. Whether the trial court erred by neglecting its duty to define the scope of John's alleged financial interest in each of the assets, as required by the Fraudulent Transfer statute? Conclusion 2.
31. Whether the trial court erred by concluding that "the Defendants failed to abide by numerous other terms in the Prenuptial Agreement" but failed to identify any "violations?" Conclusion 3.
32. Whether the trial court erred in concluding that there is clear and satisfactory evidence that Shelly's correction of titles constitutes a fraudulent transfer and that John and Shelly made those "transfers" with the actual intent to hinder, delay or defraud Cathy when Shelly proved by tracing that these assets were her separate property? Conclusion 10.
33. Whether the trial court erred in concluding that consideration was required for the assets for which titles were corrected when in reality, had John had any financial interest in those assets, at the time Shelly corrected titles, Shelly accepted \$79,083.38 of debt? Conclusion 10.
34. Whether the trial court erred in concluding that John retained possession and control over the assets when there was no evidence that supports that conclusion? Conclusion 10.
35. Whether the trial court erred in concluding that the Plenary Hearing is proof of John and Shelly's intent to commit fraudulent transfer when:
 - a. Shelly already owned the assets named in the lawsuit; and

- b. There was no unpaid support resulting from that hearing; and
 - c. John remained current for several years thereafter? Conclusion 10.
36. Whether the trial court erred when it concluded that the transfers were essentially all John's assets when none of the assets named in this lawsuit were community property? Conclusion 10.
37. Whether the trial court erred when it concluded that John became insolvent in October 2012 when John paid all his bills, including the support he owed to Cathy, from September 2001 – January 2015? Conclusion 10.
38. Whether the trial court erred when it concluded that John sought to conceal assets by titling them in Shelly's name when no proof was presented at trial by exhibit or by testimony that demonstrated that John had a motive to conceal assets because at the time Shelly purchased the assets and put them in her name, there was no order of support for Cathy; Conclusion 10.
39. Whether the trial court erred in concluding that the spousal support obligation agreed upon by John and Shelly in their Decree of Legal Separation is a fraudulent transfer? Conclusions 11 and 14.
40. Whether the trial court erred in avoiding John and Shelly's Decree of Legal Separation and its provisions when John and Shelly precisely followed their Prenuptial Agreement and Separate Property Agreement in their division of assets, all done prior to Cathy filing this lawsuit? Conclusion 11.
41. Whether the trial court erred in concluding that the correction of titles on Shelly's separate property were constructively fraudulent? Conclusion 12.

42. Whether the trial court erred in concluding that Cathy shall also be entitled to seek supplemental money judgments against Shelly in the future in the event that John fails to pay future support? Conclusion/Relief 14.
43. Whether the trial court erred in concluding that the \$89,451.24 sought in legal fees and costs was reasonable against a judgment of \$60,000? Conclusion/Relief 16.
44. Whether the trial court erred in concluding that the \$95,000 in legal fees and costs are reasonable when all Cathy had to do was call New Jersey Support Enforcement to resume the garnishment process at *no cost to her*, to collect her judgment from March 7, 2016? Conclusion/Relief 16.
45. Whether the trial court erred in concluding the counter claim for slander of title and malicious prosecution should be dismissed? Conclusions 18, 19, 20.

III. STATEMENT OF THE CASE

A. Procedural History

1. John consulted an attorney on January 26, 2016 after he and Shelly made the decision to legally separate.¹⁵ Upon the advice of counsel, John and Shelly entered into a Separate Property Agreement on January 29, 2016 for ease of dividing assets at their time of separation.¹⁶
2. On March 7, 2016, Cathy obtained her first judgment for 60,021.56.¹⁷
3. John and Shelly filed their Petition for Legal Separation on March 8, 2016,¹⁸ basing their division of assets on their Prenuptial Agreement¹⁹ and Separate Property Agreement.²⁰ A Decree of Separation was final on July 15, 2016.²¹

¹⁵ CP 210-216

¹⁶ EX 50

¹⁷ EX 58

4. Shelly listed her 6th Lane Home in March 2016.²²
5. Cathy served a subpoena on Shelly to appear for a deposition on April 6, 2016.²³ Shelly was commanded to produce all documents that relate to each asset named in the fraudulent transfer lawsuit. After going through each document where Shelly demonstrated her ability to trace all funds used to purchase the assets to her separate funds, Davies Pearson served John and Shelly with the Fraudulent Transfer lawsuit at her deposition.²⁴ At that same time, a Lis Pendens was filed on Shelly's 6th Lane Home and her Pilchuck Property.²⁵
6. Shelly filed a Motion to Expunge Lis Pendens on April 21, 2016,²⁶ which was heard on April 29, 2016 before Judge Culpepper. Shelly's motion was granted. After the Judge Culpepper ruled, Cathy continued to forcefully argue against the judge's ruling, so Shelly voluntarily offered to put \$60,000 in escrow pending the outcome of the trial.²⁷
7. Cathy refused to sign the court order²⁸ from the April 29, 2016 hearing so a second hearing was required on May 13, 2016, at which time Cathy reargued her case.²⁹ Again, Judge Culpepper granted Shelly's motion.³⁰

¹⁸ CP 210-211

¹⁹ EX 101

²⁰ EX 50

²¹ EX 34

²² CP 7-19

²³ CP 7-19, CP 20-39

²⁴ CP 398-405

²⁵ CP 408-414

²⁶ CP 5-6, CP 7-19, CP 20-39

²⁷ CP 40-41 "Williams suggests putting monies in escrow to hold until outcome of trial."

²⁸ CP 42-43 "Court enters order over obj of plaintiff. Atty Dashiell is requesting FOF/COL be filed."

²⁹ CP 42-43 "Based on Atty Dashiell's argument, Court is inquiring as to if this actually a motion for reconsideration."

³⁰ CP 44-47

8. Cathy then filed a Motion for Reconsideration on May 20, 2016³¹ where she argued the case for the third time on June 9, 2016. Judge Culpepper denied Cathy's motion and an order was signed on June 9, 2016.³² Judge Culpepper put on the record, "Should read as a final determination/order on all claims."³³
9. John and Shelly included a Motion for Issuance of Subpoena for Cathy to appear for her deposition in the hearing on May 13, 2016. Judge Culpepper ruled that she would have to appear, just "not yet." On July 1, 2016³⁴ and January 19, 2017,³⁵ John and Shelly filed Motions for Issuance of Subpoena for Cathy to appear for her deposition. Those motions were granted,³⁶ ³⁷ however, Cathy delayed her appearance until April 27, 2017, just one week prior to discovery cut-off and just three weeks prior to the scheduled trial.
10. Cathy filed a Motion for Summary Judgment September 29, 2016³⁸ which was heard October 27, 2016, seeking (among other motions) an injunction against Shelly selling her 6th Lane Home. The motion for the injunction violated Judge Culpepper's ruling on June 9, 2016 when he ruled that this was a final determination/order on all claims surrounding Shelly's right to sell her 6th Lane Home.³⁹ The Plaintiff's motions were denied.⁴⁰

³¹ CP 48-59

³² CP 109-112

³³ CP 107-108 "Denies/amends order of 5/13/16."

³⁴ CP 113-114, CP 115-120

³⁵ CP 157-158

³⁶ CP 121

³⁷ CP 159

³⁸ CP 122-145

³⁹ CP 107-108

⁴⁰ CP 146

11. Cathy filed yet another motion on October 28, 2016 for Pre-Judgment Writ of Attachment⁴¹ when she discovered that Shelly was set to close on the sale of her home. Again, this motion violated Judge Culpepper's ruling that this issue was settled on June 9, 2016.⁴² That motion was denied.⁴³
12. Trial was scheduled for May 22, 2017 but was postponed by Judge Nevin until June 26, 2017. The trial ran from June 26 – 30, 2017.⁴⁴
13. Trial court ruled that John and Shelly did not abide by the terms of their Prenuptial Agreement, rendered it unenforceable, making all of Shelly's separate property now community property of the marriage, and concluded that John fraudulently transferred assets to Shelly.⁴⁵
14. Thomas L. Dashiell filed Attorney's Fees and Costs on July 5, 2017.⁴⁶
15. Declaration in Support of Defendant's Reply to Declaration of Thomas L. Dashiell for Attorney Fees and Costs on July 12, 2017.⁴⁷
16. Judgment was entered on August 1, 2017 for \$67,524.53 to Cathy against both John and Shelly, and \$89,451.24 for attorney fees and costs.⁴⁸
17. Stipulation and Order to Disburse Funds in Court Registry: The \$60,000 Shelly paid was released to Cathy on August 4, 2017.⁴⁹
18. Satisfaction of Judgment filed November 7, 2017: Showing that Shelly paid the remaining judgment balance.⁵⁰

⁴¹ CP 147-154

⁴² CP 107-108

⁴³ CP 156, CP 155

⁴⁴ CP 231

⁴⁵ CP 231-247

⁴⁶ CP 348-376

⁴⁷ CP 415-443

⁴⁸ CP 248-250

⁴⁹ CP 444-447

19. John and Shelly filed a Motion for Reconsideration and to Amend Judgment on August 10, 2017.⁵¹ It was denied on September 13, 2017.⁵²
20. John and Shelly filed a Motion for Clarification on September 22, 2017.⁵³ It was denied on October 9, 2017.⁵⁴

B. Statement of Facts

1. John and Shelly executed a Prenuptial Agreement on August 1, 2009 in Flanders, New Jersey, in anticipation of their November 20, 2009 wedding.⁵⁵
2. John and Shelly moved to Washington from New Jersey, establishing residency in Washington on September 24, 2010.⁵⁶
3. In September 2010, Shelly brought over a million dollars in separate assets to Washington State,⁵⁷ \$364,904.58 in liquid cash from Wachovia Bank,⁵⁸ \$95,094.00 in liquid cash from Ally Bank.⁵⁹
4. Shortly after arriving in Washington State in 2010, Shelly was diagnosed with an incurable progressive illness and was found to be permanently disabled by a Social Security Administrative Law Judge.⁶⁰

ACQUISITION OF ASSETS NAMED IN FRAUDULENT TRANSFER LAWSUIT:

⁵⁰ CP 448-449

⁵¹ CP 251-270, CP 283-291

⁵² CP 292-293

⁵³ CP 294-303

⁵⁴ CP 307-308

⁵⁵ EX 101

⁵⁶ AP C – Definition of Washington Residency

⁵⁷ AP A – Spreadsheet provided at trial as a handout to the trial court and to Cathy

⁵⁸ EX 15 Page 2194 Davies Pearson redacted out one of Shelly's accounts at Wachovia with a balance of \$87,779.37, stating that it was beyond the scope of this lawsuit. This balance is reflected in AP D, the handout provided at trial to the court and to Cathy. This spreadsheet also identifies Shelly's other cash investments.

⁵⁹ EX 41, Pg. 2728

⁶⁰ EX 127

1. **6th Lane Home:** *Acquired as Separate Property:* Purchased on September 23, 2010 for \$760,000. Residential Real Estate Purchase and Sale Agreement,⁶¹ Statutory Warranty Deed,⁶² and HUD Statement.⁶³
 - a. Personal check #2096⁶⁴ from Shelly's New Jersey separate Wachovia Bank account dated September 3, 2010, for \$7,000, earnest money on the 6th Lane Home.
 - b. Personal check #2097⁶⁵ from Shelly's New Jersey separate Wachovia Bank account dated September 22, 2010 for \$267,839.99 deposited into Wells Fargo Bank account ending 8035, along with check #6443⁶⁶ from Shelly's separate Ally Bank account in the amount of \$95,197.13 for a total deposit of \$362,937.12⁶⁷.⁶⁸
 - c. Wire transfer document noting that the money was received only from Shelly Williams, from her separate Wells Fargo bank account to the Talon Group dated September 23, 2010 for the down payment on the 6th Lane Home, in the amount of \$347,718.46.⁶⁹
 - d. Shelly's Net Worth Statements from September 2010 showing her cash position just before purchasing the 6th Lane Home of \$677,880.62 and

⁶¹ EX 20

⁶² EX 21

⁶³ EX 139

⁶⁴ EX 15, Pg. 2195

⁶⁵ EX 41, Pg. 2727

⁶⁶ EX 41, Pg. 2728

⁶⁷ EX 41, Pg. 2719, 2725

⁶⁸ EX 41, Pg. 2726 Statement showing the balance of \$100.00 going into account ending 0502.

⁶⁹ EX 105, EX 41, Pg. 2719

adjusted cash position after she purchased the 6th Lane Home of \$330,162.16.⁷⁰

e. Shelly's Columbia and US Bank statements showing an autopay from her separate bank account to Wells Fargo for the mortgage payments on the 6th Lane Home from October 2010 – December 2016.⁷¹

f. Record of payments made by Shelly from her separate bank accounts on the 6th Lane Home from October 2010 through December 2016 in the amount of \$72,780.48 (Monthly payments of \$3,032.52⁷² x 24 payments). Principal only during that period totaled \$44,895.64.⁷³

g. Shelly was not yet working in Washington and needed John to co-sign for the mortgage (John's employer transferred him to Washington), which inadvertently put John's name on title to the 6th Lane Home.⁷⁴ On October 12, 2012, John executed a quit claim deed to correct title.⁷⁵

2. **The Pilchuck Property:** *Acquired as Separate Property:* Purchased by Shelly on February 24, 2014 for \$185,000: Documents include Statutory Warranty Deed,⁷⁶ and Estimated Buyer's Statement.⁷⁷

a. Check #3002, earnest money in the amount of \$3,500 paid from Shelly's separate checking account at Columbia Bank.⁷⁸

⁷⁰ AP D Provided as handouts to the trial court and the Plaintiff at trial.

⁷¹ EX 11, EX 13

⁷² EX 111

⁷³ EX 110

⁷⁴ CP 181

⁷⁵ EX 23

⁷⁶ EX 115

⁷⁷ EX 117

⁷⁸ EX 9, Pg. 1123

- b. Bank statement from Shelly's separate Columbia Money Market Account showing a withdrawal on February 24, 2014 in the amount of \$181,112.70 from account ending 3320,⁷⁹ the exact amount owing on the Estimated Buyer's Statement⁸⁰ and Ticor Title Receipt for Funds.^{81, 82}
- c. Quit Claim Deed⁸³ required at closing by Ticor Title stating that this property is being purchased by Shelly, a married woman, buying it as her separate property.⁸⁴ Note: Box is checked that "this deed is given to create the separate property."
3. **2005 Regal Cruiser Boat and 2005 Shoreland'r Boat Trailer:** *Acquired as Separate Property:* Shelly bought the 2005 Regal Cruiser and 2005 Shoreland'r Boat Trailer on March 29, 2011 for \$43,060.00 by way of a wire transfer from her separate Columbia Bank checking account.⁸⁵ Shelly transferred \$37,500 from her separate Columbia Bank Money Market to cover the boat purchase.⁸⁶ The title corrected on October 12, 2012 was only for the 2005 Shoreland'r Boat Trailer, which was included in the boat purchase.
4. **2006 Dodge Ram Pickup Truck:** Shelly bought the 2006 Dodge Ram on April 7, 2011. Shelly paid \$21,667.25 by way of a cashier's check from her separate Columbia Bank account to Rainier Dodge.^{87, 88}

⁷⁹ EX 10, Pg. 1375

⁸⁰ EX 117

⁸¹ EX 116

⁸² Funds in Shelly's Columbia Premium Money Market Bank Account were transferred from Shelly's separate Wachovia Bank Accounts when she moved to Washington State in 2010.

⁸³ EX 114

⁸⁴ EX 113

⁸⁵ EX 123

⁸⁶ EX 10, Pg. 1247

⁸⁷ EX 124

5. **2003 Lexus ES300**: *Acquired as separate property*: Granted to Shelly from her previous employer at the time she resigned her position with Lincoln Educational Services on January 23, 2008,⁸⁹ memorialized in a Separation Agreement.^{90, 91}

FINANCIAL OVERVIEW

1. **John's Separate Bank and Investment Accounts:**

- a. TD Bank/Commerce Bank account ending 5263.⁹²
- b. Columbia Bank accounts ending in 3338 and 3346.⁹³
- c. Red Canoe Credit Union account ending in 8873.⁹⁴

2. **Shelly's Separate Bank and Investment Accounts:**

- a. Wachovia Bank accounts ending 5890, 3720, 8765, 0717, 9092, et.al.^{95, 96}
- b. Ally Bank account ending 0538.^{97, 98}
- c. Wells Fargo Bank account ending 8035, 0502.^{99, 100}

⁸⁸ Prior to trial, both John and Shelly thought that Shelly alone paid for the truck. At trial, they discovered that John made the down payment of \$5,000 on his VISA. All documents have been updated with the correct information and Shelly subsequently reimbursed the \$5,000 back to John.

⁸⁹ EX 119

⁹⁰ The car was valued in excess of \$20,000 in January 2008 when Lincoln Educational Services gave Shelly her company car. She paid income tax on that money as earned income. Shelly sold John 50% of the equity in this car on November 23, 2008 for \$10,000. John's equity was consumed in the car from November 23, 2008 through October 12, 2012 by depreciation, mileage and damage done to the vehicle. John owed Shelly \$350.72 at the time Shelly corrected this title.

⁹¹ CP 182

⁹² EX 4

⁹³ EX 1, EX 2

⁹⁴ EX 3

⁹⁵ EX 15 Davies Pearson redacted one of Shelly's high balance High Performance Money Market Accounts. Shelly tracked her Net Worth monthly and this balance shows on AP D

⁹⁶ Funds moved to Columbia Bank

⁹⁷ EX 41, Pg. 2728

⁹⁸ Funds moved to Wells Fargo 9/2010 toward down payment on 6th Lane Home

⁹⁹ EX 41

¹⁰⁰ Funds moved to Columbia Bank

- d. Columbia Bank accounts ending 3168,¹⁰¹ 3320,¹⁰² 3354,¹⁰³ and 8581.¹⁰⁴
- e. US Bank accounts ending 3816, et al.¹⁰⁵
- f. Mass Mutual account¹⁰⁶
- g. Vanguard account ending 5049¹⁰⁷

3. Shelly's Net Worth Statement of September 2009 of \$1,013,346.04

Establishes Shelly's separate property prior to the parties' marriage on November 20, 2009.¹⁰⁸

4. Shelly's Cash Statement for September 2010

Just prior to purchasing the 6th Lane Home, Shelly had \$677,880.62 in cash assets.¹⁰⁹ She had liquid cash assets of \$459,998.058 (\$364,904.58 cash from Wachovia Bank,¹¹⁰ \$95,094.00 cash from Ally Bank.¹¹¹) Shelly had in excess of \$330,000 in cash *after* making the down payment on the 6th Lane Home. Her Cash Statement for October 2010, just after buying the 6th Lane Home, shows that Shelly had \$306,320.79 in cash.¹¹²

5. Shelly's Net Worth Statement of October 2010 of \$1,046,039.25

¹⁰¹ EX 9

¹⁰² EX 10

¹⁰³ EX 11

¹⁰⁴ EX 12

¹⁰⁵ EX 13

¹⁰⁶ AP D Provided as handouts to the trial court and the Plaintiff at trial.

¹⁰⁷ AP D Provided as handouts to the trial court and the Plaintiff at trial.

¹⁰⁸ AP A Provided as handouts to the trial court and the Plaintiff at trial.

¹⁰⁹ AP D Provided as handouts to the trial court and the Plaintiff at trial.

¹¹⁰ EX 15 Page 2194 Davies Pearson redacted out one of Shelly's accounts at Wachovia with a balance of \$87,779.37, stating that it was beyond the scope of this lawsuit. This balance is reflected in AP D, the handout provided at trial to the court and to Cathy. This spreadsheet also identifies Shelly's other cash investments.

¹¹¹ EX 41, Pg. 2728

¹¹² AP D Provided as handouts to the trial court and the Plaintiff at trial.

Shelly's separate assets after she purchased the 6th Lane Home.¹¹³

6. Home Equity Line of Credit (HELOC) on 6th Lane Home

- a. Application from Columbia Bank – Note that the 6th Lane Home is listed as Shelly's separate property.¹¹⁴
- b. US Bank account 3824 HELOC Statements showing that Shelly made all payments from her separate bank account.¹¹⁵
- c. Escrow Statement showing that Shelly paid of the HELOC with the net proceeds of the sale of her 6th Lane Home.¹¹⁶

VALUE OF ASSETS SUBMITTED AT TRIAL BY JOHN AND SHELLY

Values assigned at the time the titles were corrected in October 2012 were provided by John and Shelly at trial and were un rebutted. The trial court did identify an approximate value for the 6th Lane Home¹¹⁷ The parties agree that the top line equity on October 12, 2012 was approximately \$314,000.¹¹⁸ However, this does not take into account the traceable contributions made by Shelly from her separate bank accounts, contributions totaling \$399,614.10, as outlined above in B.1.¹¹⁹ After crediting Shelly's traceable contributions, the equity is reduced to -\$85,182.33.¹²⁰ The trial court did not identify the value of any other asset. Based on the values John and Shelly submitted at trial, the net debt "transferred" to Shelly was \$79,083.38.¹²¹

¹¹³ AP B Provided as handouts to the trial court and the Plaintiff at trial.

¹¹⁴ EX 19

¹¹⁵ EX 18, Pg. 2406 - 2435

¹¹⁶ EX 140

¹¹⁷ RCW 19.40.081(3) if the judgment under subsection "2" of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

¹¹⁸ EX 107, EX 110, CP 165

¹¹⁹ EX 41 Pages 2719, 2725, 2726, 2727, and 2728, EX 15 Page 2195

¹²⁰ CP 183

¹²¹ CP 185-188

IV. ARGUMENT

The defense to the claim of fraudulent transfer is that the assets named in this lawsuit are Shelly's separate property. Shelly's proof that these assets belong solely to her is that she can trace each purchase to her separate bank accounts or by contract, and that these assets are named as her separate property in their Prenuptial Agreement, either named specifically or by provision.

A. COMMUNITY PROPERTY VS. SEPARATE PROPERTY

The trial court erred in concluding that all the property in the marriage is community property by (1) not tracing the funds that purchased each asset, and (2) voiding the parties' Prenuptial Agreement and Separate Property Agreement that characterized the property as separate, and (3) by concluding that because John's name had been on titles, that he was the joint owner of assets.

The question of community or separate was settled by the State Supreme Court in

Rustad v. Rustad, 61 Wn.2d. 176, 377 P.2d 414 (1963):

In this state, the applicable rules are: (1) The community or separate character of real property is determined by the character of funds used in its purchase. *Brookman v. Durkee*, 45 Wash. 578, 90 Pac. 914.

The trial court erred in concluding that the property was community when the funds used to purchase the assets are traceable directly to Shelly's separate bank accounts, money which she earned in New Jersey and brought to Washington just prior to purchasing the assets from September 23, 2010 – April 4, 2011. These are the only assets in which Shelly gratuitously allowed John's name on title.

These assets were purchased four – five years before Cathy shows concern over money John contributed toward his and Shelly's joint living expenses, as noted in Findings of Fact 32 where the focus is on money contributed after 2015.

Because Shelly bought the 6th Lane Home prior to living in Washington State, the following case outlines how the State Supreme Court evaluated this same circumstance in *Brookman v. Durkee*, 46 Wash. 578, 90 P. 914, 1907:

Eugene R. Durkee conducted a manufacturing business in the state of New York, and accumulated as the profits of such business a considerable fortune. In 1888, a year prior to the death of his wife, he used a portion of the fortune so accumulated in the purchase of certain real property situated in Pierce county in this state...But while the statute broadly construed gives countenance to the contention of the respondents, we cannot think it was the intention of the legislature that no distinction should be made between property acquired wholly within this state by the joint efforts of husband and wife, and property acquired by them elsewhere and brought within this state. If it were the intent of the statute that property acquired in another jurisdiction and brought within the state should become community property, its legality might be seriously questioned. It would destroy vested rights. It would take from one of the spouses property over which he or she had sole and absolute dominion and ownership, and vest an interest therein in the other, and if the spouse should be the wife it would not only take away her absolute title, but would take away from her her right to control and manage the property, and make it subject to the separate debts of the husband whether or not she derived any benefit from their contracting, or had any legal or moral obligation to pay them. Therefore, without entering further into the reasons for the rule, we are clear that personal property acquired by either husband or wife in a foreign jurisdiction, which is by law of the place where acquired the separate property of one or the other of the spouses, continues to be the separate property of that spouse when brought within this state; and it being the separate property of that spouse owning and bringing it here, property in this state, whether real or personal, received in exchange for it, or purchased by it if it be money, is also the separate property of such spouse. While this question has not been directly before this court, analogous cases sustaining the rule can be found. In *Freeburger v. Gazzam*, 5 Wash. 772, 32 Pac. 732, certain personal property had been seized on an execution against the husband for which the community was liable. The wife sought to recover the property seized, on the ground that it was her separate property, having been acquired by her by purchase with money which she acquired in the state of Kansas and brought into this state. The court held the property to be her separate property, saying that the property was her separate property in the state of Kansas and did not change its status by being brought across our state border.

Not only did the trial court err in not recognizing the separate assets Shelly brought to Washington State, the trial court erred in not retaining the 6th Lane Home as Shelly's separate property. Furthermore, the trial court acted in opposition to the Supreme Court's opinion that the separate property of a spouse cannot be seized when collecting on a debt of the other spouse. In this case, it is Cathy who sought to collect on a judgment on John only. Therefore, Shelly's separate property cannot be attached for any judgment against John.

Schwarz v. Schwarz, 192 Wn. App. 180, 189 (2016) supports the conclusion that the assets named in this lawsuit are Shelly's separate property, as she can trace with bank records that the funds for each asset came from her separate accounts.

An asset is separate property if "acquired before marriage; acquired during marriage by gift or inheritance; acquired during marriage with the traceable proceeds of separate property;" ...the requirement that assets be traced required Ms. Champagne to demonstrate by clear and convincing evidence that any acquisition of "new" assets she claimed as separate was with the proceeds of separate assets.

It is important to note that Shelly earned nearly all of this money before she was married to John and earned all of it while living in New Jersey. *In re Marriage of Skarbek*, 100 Wn. App. 444 (2000) illustrates that the property acquired during John and Shelly's marriage is owned by the person who used their separate funds to purchase the assets *even if both names are put on title*. Further, once the characterization of the property is established as separate, it retains that separate status unless a very overt action occurs to change it:

Once established, separate property retains its separate character unless changed by deed, agreement of the parties, operation of law, or some other direct and positive evidence to the contrary. *In re Estate of Witte*, 21 Wash.2d 112, 125, 150 P.2d 595 (1944); *In re Estate of Madsen*, 48 Wash.2d 675, 676-77, 296 P.2d 518 (1956). Separate property will

remain separate property “through all of its changes and transitions” so long as it can be traced and identified. In *re Estate of Witte*, 21 Wash.2d at 125, 150 P.2d 595; *Baker v. Baker*, 80 Wash.2d 736, 745, 498 P.2d 315 (1972); In *re Marriage of Pearson-Maines*, 70 Wash. App. 860, 865, 855 P.2d 1210 (1993). The burden is on the spouse asserting that separate property has transferred to the community to prove the transfer by clear and convincing evidence, usually a writing evidencing mutual intent. In *re Marriage of Shannon*, 55 Wash. App. 137, 140, 777 P.2d 8 (1989).

Gage v. Gage, 78 Wash. 262, 138 Pac. 886; *Volz v. Zang*, 113 Wash. 378, 194 Pac. 409 explains it even more specifically:

It is undoubtedly true that husband and wife may, by proper agreement or conveyance, change their separate property into community property and their community property into separate property. But in determining whether separate property has, in fact, been changed from separate into community property, the following rules have been definitely settled by this court and are to be kept in mind: (1) The status of property, whether separate or community, is to be determined as of the date of its acquisition; (2) this rule is true with reference to personal property as well as with reference to real property; (3) if the property is once shown to have been separate property, the presumption is that it continues separate property until that presumption is overcome by evidence; (4) separate property continues to be separate property through all its changes and transitions, as long as it can be clearly traced and identified; (5) the rents, issues and profits of separate property remain separate property. *In re Brown's Estate*, 124 Wash. 273, 214 Pac. 10; *Rogers v. Joughin*, 152 Wash. 448, 277 Pac. 988.

In *Guye v. Guye*, 63 Wash. 340, 115 PAc. 731, 37 L.R.A. (N.S.) 186, it was said:

Moreover, the right of the spouses in their separate property is as sacred as is the right in their community property, and when it is once made to appear that property was once of a separate character, it will be presumed that it maintains that character until some direct and positive evidence to the contrary is made to appear.

A credible argument on the question of community property vs. separate property comes from the appellate brief filed by Mr. Skarbek’s counsel *In re Marriage of Skarbek*, 100 Wn. App. 444 (2000):

The nature of the property will not change throughout a marriage absent some specific change in character. *In re Estate of Madsen*, 48 Wn.2d 675, 677, 296 P.2d 518 (1956). A spouse’s separate property is that owned

prior to marriage, along with “rents, issues and profits thereof.” RCW 26.16.010, RCW 26.16.020. On the other hand, property acquired during marriage is presumed to be community property. *Madsen v. Commissioner of the Internal Revenue Service*, 97 Wn. 2d 792, 796, 6540 P. 2d 196 (1982). The presumption can be overcome with a showing of clear and convincing proof. *Id.* To rebut the presumption, a party asserting that property acquired during marriage is separate property must be able to trace “with some degree of particularity” the separate source of the funds used for the acquisition. *Pollock v. Pollock*, 7 Wn. App. 394, 400, 499 P. 2d 231 (1972); *Berol v. Berol*, 37 Wn.2d 380, 382, 223 P.2d 1055 (1950). If separate assets are commingled with community assets, the entire asset is presumed to be community unless the separate funds can be traced or identified. *Mumm v. Mumm*, 63 Wn.2d 349, 352, 387 P.2d 547 (1963). If the party is able to trace the separate property interest from the commingled asset, then the separate property interest is preserved. *Id.*

The appellate court ruled that Skarbek satisfactorily traced his funds, proving that the assets in question were his separate property. Shelly thoroughly traced her funds to each of the assets listed in the fraudulent transfer lawsuit; however, the trial court never even acknowledged it and ignored her proof entirely. Since Shelly never expressed an intention to make any of these assets a gift to the community, the trial court cannot find that there was a donative intent, and thus, a gift to the community has not been shown; therefore, these assets remain Shelly’s separate property.

Guidance regarding that the name under which the property is held does not determine the characterization of that property is cited in *In re Estate of Deschamps*, 77 Wn. 514, 137 P. 1009 (1914):

The wife in *Deschamps* had used her separate funds to acquire real estate by deed naming both husband and wife as grantees. With a fact pattern identical to this case, the *Deschamps* Court held that the asset was the wife’s separate property and declined to put much significance on the fact that both names were on the deed. The appellate court opined:

[i]t is not shown that the wife ever intended to give up a one-half interest in the property, or that she understood that her husband could assert a greater interest in the property than would be represented by his advances, if any.

In re Marriage of Mueller, 140 Wn. App. 498, 501 (2007) confirms that the names under which property is held is not determinative of ownership:

Spouses may change the status of their community property to separate property by entering into mutual agreements...the name under which the property is held does not determine whether the property is community or separate.

John and Shelly followed the directive in *Mueller* and executed a Prenuptial Agreement as well as a Separate Property Agreement, identifying the property status of specific assets and how to identify the characterization of future assets as follows:

The home owned by Shelly Williams at 20 Vista Drive, Flanders, New Jersey, will continue to be solely owned by Shelly Williams, as will any of her homes owned in the future, and will not become a joint asset of the marriage.

FURTHERMORE, any individual purchases made during the marriage will be the separate property of the party who paid for the asset.

By tracing the separate bank records of Shelly, it is clear that she used her separate funds from her separate bank accounts to make each purchase noted in Cathy's fraudulent transfer lawsuit. Every asset was Shelly's separate property; therefore, no fraudulent transfer was possible.

B. PRENUPTIAL AGREEMENT

The trial court erred in voiding the parties' Prenuptial Agreement. The trial court relied on the holdings of *In re Marriage of Fox*, 58 Wn. App. at 936-37, 795 P.2d 1170 (1990) and *In re Marriage of Sanchez*, 33 Wn. App. 215, 218, 654 P.2d 702 (1982) when the fact patterns in these cases are dramatically inconsistent with the facts in John and Shelly's case.

If the Appellate Court finds that the property named in the Fraudulent Transfer lawsuit was indeed Shelly's separate property, then exploring argument around the Prenuptial Agreement becomes moot. Conversely, should the Appellate Court not be persuaded by the previous argument, then the Prenuptial Agreement becomes critical in proving that the assets were Shelly's separate property.

John and Shelly closely followed the recommended steps in executing a valid Prenuptial Agreement,¹²² and no one questioned its validity in this case.

John and Shelly exhaustively searched case law in an effort to find a single case where a valid Prenuptial Agreement was voided when the party seeking to have the Prenuptial Agreement rescinded was not one of the parties to the contract. Since not one could be identified, this does prompt one to consider whether a person external to those who executed the agreement have the authority to challenge its *enforcement*. There were many estate cases for review; however, those cases were being challenged by other family members regarding the *validity* of the Prenuptial Agreement. In this case, Cathy made self-serving claims that John and Shelly did not abide by the terms of their Prenuptial Agreement seven years after it was executed as a means to have Shelly's separate property converted to community property so that she could then obtain judgments against Shelly's assets. The trial court ruled in her favor and voided their Prenuptial Agreement in its entirety. *In re Marriage of Mueller*, 140 Wn. App. 498, 501 (2007), the *Mueller* Court defines the trial court's objective in interpreting a Prenuptial Agreement is to determine the parties' mutual intent:

¹²² CP 166-171

Extrinsic evidence may be consulted to elucidate the meaning of the contract terms, but not to contradict the objective manifestations of intent.

John and Shelly's intent to keep their funds separate and their property separate has never wavered since they moved in together in 2005. They assert that the trial court erred in ruling their Prenuptial Agreement as unenforceable, erroneously citing *In re Marriage of Fox*, 58 Wn. App. 935, 938, 795 P.2d 1170 (1990) and *In re Marriage of Sanchez*, 33 Wn. App. 215, 218, 654 P.2d 702 (1982) as case law that has the same fact patterns as John and Shelly's case to support that ruling. In both *Fox* and *Sanchez*, their Prenuptial Agreements were deemed rescinded by the parties' postnuptial conduct. However, these cases are dramatically different compared with the facts of this case.

In *Marriage of Fox*, 58 Wn. App. at 936-37, 795 P.2d 1170 (1990) the appellate court stated:

...the court found Ms. Fox had transferred all her separate funds during marriage to the joint community checking account, and the funds were then spent by both parties on improvements to the family home awarded to Ms. Fox, living expenses and other nonidentifiable items. The court also found Mr. Fox inherited \$36,000 during marriage which he also placed in the joint account and which was spent by both parties on living expenses. The court concluded the antenuptial agreement was not valid and was unenforceable for these reasons: ... (3) the parties had rescinded the agreement and could not seek enforcement of it. (Underline mine)... The subsequent disregard of an agreement may establish an intent to abandon it, which may constitute a rescission when factually probable because each party knew the other had made the contribution of all separate property to the community bank account.

Likewise, in *Sanchez*, the trial court concluded that the parties did not mutually observe the terms of the Prenuptial Agreement. Several examples are cited in the finding, including that both parties deposited funds, including the husband's personal income, into a joint account.

The provision in John and Shelly's Prenuptial Agreement that the trial court found John deviated from was:

FURTHERMORE, the individual savings and checking accounts of both John Shubeck and Shelly Williams will be retained as their separate and distinct accounts, not to be co-mingled and treated as a joint asset.

The trial court concluded that John and Shelly deviated from their Prenuptial Agreement because John provided funds to Shelly for expenses, which she deposited into her separate bank account, the only checking account from which she paid all household expenses and her separate bills. There is no provision that states that they are not permitted to give funds to each other as needed in the ordinary course of operating as a married couple or that by doing so, it would convert their separate bank account into a joint account. The intent of this provision was to stipulate that all individual bank accounts of each party would **never be treated as a joint asset of the marriage under any condition.** It is the responsibility of the trial court to examine John and Shelly's mutual intent, "but not to contradict the objective manifestations of intent." *In re Marriage of Mueller*, 140 Wn. App. 498, 501 (2007).

Without citing any supporting case law, the trial court concluded that by Shelly depositing checks from John into her separate bank account, that "the entire amount is rendered community property." That notion is defeated *In re Marriage of Skarbek*, 100 Wn. App. 444 (2000), as follows:

But depositing separate funds in a joint bank account is not an acquisition of property; therefore, no presumption attaches. John Skarbek deposited separate funds in a joint account. But he then traced and identified the separate funds. The court classified those funds as community property. This was error and so we reverse and remand...However, only when money in a joint account is hopelessly commingled and cannot be separated is it rendered entirely community property. *Pearson-Maines*, 70 Wn. App. at 866. If the sources of the deposits can be traced and

identified, the separate identity of the funds is preserved. *Id.* at 867...What we have here is property acquired before, not during, the marriage. Ms. Skarbek does not dispute that Mr. Skarbek accumulated these funds prior to the marriage. The money was, therefore, his separate property at the date of acquisition. It, therefore, remained his separate property unless its character was changed by mutual agreement. But Mr. Skarbek lost the benefit of the presumption and assumed the burden of proving the separate character of the funds when he put the money into an account where it was commingled with community funds. He then met this burden by establishing and tracing, clearly and convincingly, the separate source of the funds...He did this by exhaustively documenting the details of the bank account activity. The court was satisfied with his accounting and his tracing of \$ 46,000 as continuously separate property. The court correctly characterized this money as Mr. Skarbek's separate property in its findings of fact, conclusions of law, and decree of September 25, 1998. (Underline mine)

This was the finding of the appellate court when Skarbek deposited his separate funds into a joint bank account, something that John or Shelly never did; nonetheless, the trial court classified Shelly's separate bank account as community.

A key issue in this case is the definition of commingling. The trial court defined it as depositing your spouse's funds into your separate account. Once that happens, the trial court concluded that it made that separate bank account community and anything purchased from it, a joint asset of the marriage. The *Skarbek* Court effectively negates that definition. Case law favors a different definition of commingling: *a party who takes their separate funds and commingles them with community funds* is the consistent definition that was found in case law.

In re Marriage of Skarbek, 100 Wn. App. 444 (2000), the requirement for commingling is having a joint bank account, as follows:

However, only when money in a joint account is hopelessly commingled and cannot be separated is it rendered entirely community property. *Pearson-Maines*, 70 Wash.App. at 866, 855 P.2d 1210. (Underline mine)

The trial court erred in its conclusion that Shelly's separate bank account is hopelessly commingled and rendered it entirely community property.

The same definition is found *In re: the Marriage of Schwarz*, 192 Wn. App. 180 (2016), "Commingled is defined as to mingle or mix together: to combine into a common fund." A common fund means that both parties own the account, have access to the funds in the account, and can make deposits and withdrawals on the account. John and Shelly did not have a common fund. The same definition is found in 21 Wn.2d 112, *In the Matter of the Estate of E. A. WITTE, Deceased*:

COMMINGLING OF SEPARATE AND COMMUNITY PROPERTY.
Where separate funds have been so commingled with community funds that it is no longer possible to distinguish or apportion them, all of the commingled fund, or the property acquired thereby, is community property. (Underline mine)

And one final case, which repeats the same requirements - *In Re Binge's Estate*, 105 P.2d 689 (Wash. 1940):

We again held that, where separate funds have become so commingled with community funds as to make it impossible to trace the former or tell which are separate and which are community funds, all funds, or property into which they have been invested, belong to the community.

In other words, **Separate Funds + Joint Account Funds = Commingled Funds.**

John and Shelly never mixed separate funds with joint account funds.

The assets retain their characterization until such time Shelly chooses to explicitly convert them from her separate property to community property. Cathy focused her entire case at trial on the bank records showing that John gave Shelly money each month toward their expenses. Cathy's position is that married people cannot give money to each other to cover household expenses and retain separate property. However, John contributing toward expenses was established in 2006 and

was done in the normal course of business between first domestic partners and then between husband and wife. Shelly paid all the household bills and her separate bills from her separate bank account and John paid all his separate bills from his separate bank account. No amount of money that John contributed toward household expenses could alter the separate property characterization that was established at the time Shelly purchased each asset.

The other important factor that was ignored by the trial court is that for every asset purchased by Shelly, she had ample funds to cover the cost of the assets in her other bank accounts, negating the trial court's conclusion that John's funds actually purchased any of the assets. Had John or Shelly been aware that Cathy could come forward and make such a claim, they would have taken every precaution, however impractical, to ensure that the separate property designation could not be challenged. In a marriage where the parties intend to maintain property as separate and bank accounts as separate, it is impossible to completely sever all financial transactions; yet, the trial court ignored John and Shelly's clear intention of wanting to ensure their bank accounts remained separate and their property remained separate and unilaterally converted all their property to community property.

The differences between the *Fox* and *Sanchez* cases and John and Shelly's case are striking. One of the key factors upon which the courts ruled that their Prenuptial Agreements were unenforceable is that in *Fox* and *Sanchez*, they deposited their separate funds into joint bank accounts, (which is consistent with the universal definition of commingle). In the *Fox* case, nearly all of their separate property was deposited into a joint account and then assets were purchased from this account. This

demonstrates that from the court's perspective, it is the depositing of separate funds into a joint account that triggered the decision that they did not abide by the terms of their Prenuptial Agreement. Again, John and Shelly had no joint bank account.

The trial court found that John and Shelly paid each other's debts. Not one bill, check or proof of payment was presented in court to prove this allegation except for the times Shelly paid John's VISA bills. Any time John charged construction materials, Shelly paid that VISA bill since the charges related to her separate property. Shelly was not paying John's debt but rather paying for her own assets.

The fact patterns of both *Sanchez* and *Fox* are so dissimilar to John and Shelly's case that they were not a reasonable comparison for the trial court to base its conclusion that John and Shelly did not abide by the terms of their Prenuptial Agreement and render it unenforceable.

There is a case that bears similarity to this case. In an unpublished opinion by the United States District Court, in *LaRoche v. Billbe*, et al, No. 2:2013cv01913 - Document 30 (W.D. Wash. 2014) the Court stated:

With regard to the equitable remedy of rescission by conduct, the ways in which Hoffman is alleged to have disregarded the Prenuptial Agreement are: (i) depositing community income into separate accounts; (ii) discontinuing required contributions to a retirement account in LaRoche's name; and (iii) using community property to improve the Woodinville house, which Hoffman owed before, and sold during, the marriage. *See* Respondent/Cross-Appellant Brief at 48-49, Ex. 13 to Billbe Decl. (docket no. 18-1). The Court is satisfied that the King County Superior Court would not have found these grounds for rescission persuasive.

The obvious similarity is that both Hoffman and John deposited their income into separate accounts. The court called Hoffman's conduct a "deviation of the Prenuptial Agreement" and stated that it was not significant enough to warrant a

rescission of their agreement, and that ignores the fact that Hoffman had two additional “deviations.” The Hoffman Court *did not conclude* that his income deposited in separate bank accounts resulted in commingled funds, nor did the Hoffman Court conclude that anything purchased from those separate accounts were now community property of the marriage. The Hoffman Court held that the designation of a separate bank account remained regardless from where those funds originated.

Here is how the *LaRoche v. Billbe* Court responded to Mr. Hoffman’s deviations of the Prenuptial Agreement:

The Court concludes that the minor ways in which Hoffman deviated from the provisions of the Prenuptial Agreement would not have convinced the King County Superior Court to grant LaRoche the equitable remedy of rescission. This case is entirely different from *Fox* and *Sanchez*, in which the failures to comply with the terms of the Prenuptial Agreement were mutual and involved virtually all of the parties’ assets.

The trial court concluded that John and Shelly’ Prenuptial Agreement was unenforceable and voided the entire Prenuptial Agreement, providing no citations of case law that supported that conclusion. The *LaRoche* Court, which is closest case to this case, did take a stand on the issue of funds being deposited into a separate bank account and saw it as being “**insignificant.**”

C. FRAUDULENT TRANSFER

The trial court erred in concluding that John and Shelly were guilty of fraudulent transfer when:

- 1. By tracing Shelly’s separate funds, each of the assets name in the lawsuit were Shelly’s separate property;**
- 2. There was a Separation Agreement designating the 2003 Lexus as Shelly’s property;**
- 3. There was a valid Prenuptial Agreement and Separate Property Agreement naming the assets as Shelly’s property, either directly or by provision;**
- 4. John and Shelly divided these assets according to these agreements at their time of separation, proving their intent never wavered on the separate property characterization established at the time they were purchased;**

5. **That when Shelly corrected titles, John actually transferred debt of \$79,083.38 to Shelly; therefore, no consideration was required; and**
6. **Since John and Shelly are convinced that these assets are, in fact, Shelly's separate property, the correction of titles was done in good faith.**

It is clear from the following case law that the burden of proving that it is the intent of the parties to hinder or delay the party from receiving money owed in a judgment must be clear and satisfying, that there cannot be another reasonable explanation for the "transfers." The trial court must presume honesty and good faith.

Clearwater v. Skyline Const. Co., Inc., 67 Wash.App. 305, 321, 835 P.2d 257, 266 (Wash.App. Div. 1, 1992):

[U]nder the Uniform Fraudulent Conveyance Act (UFCA), which preceded the UFTA and which contained essentially similar provisions, proof of actual intent to defraud was to be demonstrated by "clear and satisfactory proof".

Anchor Buggy Co. v. Houtchens, 59 Wash. 697, 110 Pac. 1019:

Conceding the correctness of the legal propositions submitted by the appellants, to the effect, that a deed conveying real estate is presumed to have been made without a fraudulent intent; that fraud is never presumed but must be established by the party alleging it;

Workman v. Bryce, 50 Wn.2d 185 (1957) 310 P. 2d 228:

The plaintiff first contends that the burden was upon the defendants to prove that the two transactions in question were entered into in good faith, and further contends that they failed to sustain this burden. The rule is that the burden of proving fraud rests upon the party seeking to set aside a transaction alleged to be fraudulent.

Hegwine v. Longview Fibre Co., 132 Wn. App. 546, 555-56, 132 P. 3d 789 (2006):

The trial courts finding of fact are reviews for substantial evidence. Substantial evidence to support a finding of fact exists where there is sufficient evidence in the record "to persuade a rational, fair-minded person of the truth of the finding.

Rohrer v. Snyder, 29 Wash. 199 (1902):

But more than this, it must be borne in mind that there is a presumption of honesty and good faith that prevails in favor of all ordinary business transactions; that fraud is never presumed, but must be established by the party alleging it. Where the good faith of a conveyance is assailed, it is not enough that the evidence may cause a suspicion as to its good faith. The evidence must be clear and satisfactory, and such as convinces the mind

that the conveyance is in reality fraudulent. Taken in connection with the presumption of honesty and good faith that prevails in favor of the validity of the transactions, and the positive statement of the grantee to the effect that he was a purchaser for value and in good faith, these circumstances, as we say, fall short of these requirements.

John and Shelly presented exhaustive documentation proving that Shelly already owned the assets noted in the lawsuit; therefore, the correction of titles were made in good faith.¹²³ The trial court concluded that these assets were community property. It did not matter to the trial court whether it had previously been owned as Shelly's separate property, whether it was Shelly's funds that she brought to Washington from New Jersey, or whether Shelly traced her purchase of that asset to funds from her separate bank accounts. Once all the assets were thrown into a community property pot, the trial court concluded that there was a fraudulent transfer.

Once the trial court concluded that a fraudulent transfer occurred, it was required to define the value of the assets "transferred" on October 12, 2012; had the trial court met this requirement, it could not conclude fraudulent transfer occurred because John transferred debt to Shelly.¹²⁴

Sedwick v. Gwinn 73 app. 879, Appellate Decision 1994:

...at the time of the loan transactions, there was no expectations that Sedwick would be awarded attorneys fees...or (2) the debtor intended to incur, believed, or reasonably believed that he or she would incur, more debts than the debtor would be able to pay.

Similar to *Gwinn*, it is important to note that John did not expect to incur any more debt following the September 27, 2012 hearing beyond his ongoing requirement

¹²³ RCW 19.40.081(1) A transfer or obligation is not voidable under RCW 19.40.041 (1) or 19.40.051 (1) against a person that took in good faith and for a reasonably equivalent value

¹²⁴ RCW 19.40.081(1) A transfer or obligation is not voidable under RCW 19.40.041 (1) or 19.40.051 (1) against a person that took in good faith and for a reasonably equivalent value whether or not given to the debtor or against any subsequent transferee or obligee. If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

to pay alimony. It was John's expectation that the worst had happened and it was over. He paid. He was current. He was able to make the new alimony payments ordered by the court. There was no motive or intent to commit fraud.¹²⁵

Sedwick v. Gwinn, 73 app. 879, Appellate Decision 1994:

[6, 7] Under the former Uniform Fraudulent Conveyance Act (UFCA), the burden of proof rested upon the party alleging the fraudulent conveyance. See *Columbia Intern. Corp. v. Perry*, 54 Wn.2d 876, 880, 344 P.2d 509 (1959). Cases decided under the UFCA are relevant when interpreting the UFTA because the acts' provisions are essentially the same. See *Clearwater*, 67 Wn. App. at 321. Because no reason exists to alter the burden of proof under the UFTA, we hold that the burden of proof rests on the party alleging the fraudulent transfer.

There is absolutely no evidence that John and Shelly engaged in any action with the intent to hinder, delay or defraud Cathy. They acted in good faith when Shelly corrected the titles on her assets, convinced that those assets already belonged to her. Further, there was no consideration necessary to fulfill the reasonably equivalent value requirement because Shelly took on additional debt.¹²⁶

There are eleven elements that constitute "Badges of Fraud" that are absent in this case.¹²⁷ With proof of Shelly's ability to trace her separate funds to the purchase of each of the assets, a valid Prenuptial Agreement, a valid Separate Property Agreement and no badges of fraud, it is clear that no fraudulent transfer occurred. Shelly was exercising her legal right to correct titles on her own property.

D. SCOPE

¹²⁵ RCW 19.40.041 Transfers fraudulent as to present and future creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation; (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation

¹²⁶ RCW 19.40.081(1) A transfer or obligation is not voidable under RCW 19.40.041 (1) or 19.40.051 (1) against a person that took in good faith and for a reasonably equivalent value.

¹²⁷ CP 176-180

The trial court erred in not identifying the value of the assets at the time of the transfer in order to memorialize the judgment limits. The trial court further erred in not identifying the scope of Shelly's personal exposure with her separate property in the future.

The trial court erred in failing to identify what it considered to be the value of the assets at the time of the alleged transfer, and instead, chose to leave the question of value unanswered.¹²⁸ Since the trial court left the possibility of future judgments in this case open against Shelly, it is imperative that scope is identified as to Shelly's future exposure, if at all. John and Shelly sought remedies with the trial court in their Motion for Reconsideration,¹²⁹ in Shelly's additional Declaration,¹³⁰ and finally in their Motion for Clarification.¹³¹ These documents address the fact that the trial court neglected to provide parameters around the judgment and scope around Shelly's future exposure. The trial court denied these motions.

What is most revealing in Cathy's September 5, 2017 response to John and Shelly's Motion for Reconsideration is her acknowledgement that holding Shelly hostage forever for any possible future lapses by John in paying alimony was, "Well, that is the point."¹³² *Shelly is not required to pay alimony to Cathy.* Yet, the trial court has given Cathy full access to Shelly's separate property forever. John and Shelly legally separated on March 8, 2016 *before* Cathy filed the Fraudulent Transfer lawsuit. It is imperative that scope is defined around any possible legal exposure to Shelly's separate assets. The trial court repeatedly refused to define the exact value

¹²⁸ RCW 19.40.081 Defenses, liability, and protection of transferee. (c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer.

¹²⁹ CP 251-270

¹³⁰ CP 283-291

¹³¹ CP 294-303

¹³² CP 390

of which assets the court concluded were fraudulently transferred, keeping Shelly on the hook for the rest of her life for Cathy's future alimony.

In *Clayton v. Wilson*, 168 Wash. 2d. 57 (2010), the trial court failed to define the scope of the fraudulent transfer at the time Mr. Wilson transferred marital property to Ms. Wilson. On appeal, the appellate court affirmed the fraudulent transfer conclusion of the trial court but remanded for the trial court to identify the scope of Ms. Wilson's exposure with regard to the marital property.

E. ATTORNEY FEES

The trial court erred in awarding fees when the court itself concluded that this trial “did not need to happen.”¹³³ The court further erred in awarding exorbitant attorney fees that were the result of Cathy endlessly protracting litigation and not cooperating with discovery and appearing for her deposition.

This lawsuit was unnecessary. As the trial court concluded, there was already a mechanism in place for Cathy to collect her judgment from New Jersey Support Enforcement.¹³⁴ However, Cathy did not choose that path. Instead, she chose a very costly approach and then over-litigated the case at every turn, sometimes in defiance of the court's order that its ruling was final.¹³⁵ A copy of John and Shelly's Response to Cathy's Motion for Attorney Fees and Costs outlines the unnecessary litigation and costs that could easily be avoided.¹³⁶

V. CONCLUSION

John and Shelly respectfully ask this court to:

1. Reverse the trial court's conclusion that the assets named in the lawsuit are community property; and

¹³³ CP 415-443

¹³⁴ CP 415-443

¹³⁵ CP 415-443, CP 107-108 “Should read as a final determination/order on all claims.”

¹³⁶ CP 415-443

2. Reverse the trial court's conclusion that the Prenuptial Agreement is unenforceable; and
3. Reverse the finding of Fraudulent Transfer either:
 - a. Because the assets named in the lawsuit were Shelly's separate property; or
 - b. Based on the fact that Shelly took on debt by correcting the titles to the assets in the amount of \$79,083.38; and
4. Reverse the joint judgments against John and Shelly for alimony arrears and remand for reinstatement of the original judgment against just John only; and
5. Reverse the judgment of counsel fees and court costs;

Should the court not provide the above relief, then they ask this court to:

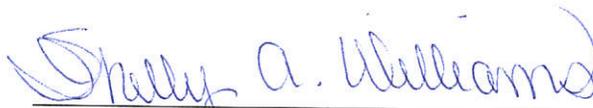
6. Remand to the trial court to establish the value of the assets allegedly transferred on October 12, 2012 and define the scope of the judgment as it pertains to Shelly in the future;
7. Exclude the Pilchuck Property and 2005 Cruiser from the Fraudulent Transfer lawsuit because neither asset was transferred; and
8. Reverse the trial court's conclusion that \$89,451.24 are reasonable attorney fees and costs.

February 14, 2018

Respectfully submitted,



John R. Shubeck, Appellant Pro Se



Shelly A. Williams, Appellant Pro Se

APPENDIX A

**Shelly Williams' 2009 Net Worth Spreadsheet
(Trial Opening Arguments Chart)**

SHELLY'S NET WORTH 9/2009

Purchase Date	Stock Symbol	Purchase or Option Price	Shares	Purchase Amount	Current Price	Current Value
Options						
36731	StreamServ	0.00	38,000.00	0.00	0.00	0.00
	Red Vision Systems, Inc.		7,500.00	0.00	0.00	0.00
Account No. Cash						
*3720	Wachovia Crown Checking					2,086.33
*5890	Wachovia High Performance Money Market					124,877.11
Account No. Money Market						
09945295049	Vanguard Prime Money Market		4,000.00		1.00	4,000.00
Account No. Certificate of Deposit						
287272052580717	Wachovia CD 2-year	10,000.00				11,510.31
288812073639092	Wachovia CD 3-year	30,000.00				31,654.56
Account No. Money Market						
2116990538	Ally Bank					93,864.58
Account No. Certificate of Deposit						
09517993736	Chase	30,000.00				31,374.23
Account No. IRA						
09945295049	Vanguard Growth & Income Fund (0093)		9,000.00		1.00	9,000.00
200093598	Prudential Financial(Corinthian Colleges)		2,740.98			2,740.98
Account No. 401(k)						
	Merrill Lynch (Lincoln Educational Services)					39,296.96

Account No. 401(k)

MassMutual (RedVision)

11,000.00

Account No. Retirement Account

State of Washington - PERS II

1.00 4,940.98

Account No. Stocks

09945295049 500 Index Fund Investment (0040)

1.00 12,000.00

09945295049 Growth Index Fund Investment (0009)

1.00 12,000.00

09945295049 Value Index Fund Investment(0006)

1.00 12,000.00

09945295049 Mid-Cap Growth Index Fund (0832)

1.00 12,000.00

09945295049 Total International Stock Index (0113)

1.00 12,000.00

Account No. Bonds

09945295049 Total Bond Market Index Investment (0084)

32,000.00

TOTAL CASH **458,346.04**

Assets

Cash Value

Liabilities

Home

750,000

Mortgage

480,000.00

2008 Lexus RX350

35,000

2003 Lexus ES300

10,000

Jewelry

40,000

Furniture and Household Iter

200,000

TOTALS

1,035,000

480,000.00

NET WORTH FROM ASSETS

555,000.00

TOTAL NET WORTH

1,013,346.04

APPENDIX B

Shelly Williams' 2010 Net Worth Spreadsheet (Trial Opening Arguments Chart)

SHELLY'S NET WORTH OCTOBER 2010

Purchase Date	Stock Symbol	Purchase or Option Price	Shares	Purchase Amount	Current Value
Options					
36731	StreamServ	0.00	38,000.00	0.00	0.00
	Red Vision Systems, Inc.		3,750.00	2,662.50	3,750.00
Account No. Cash					
*3720	Wachovia Crown Checking				1,146.44
*5890	Wachovia High Performance Money Market				22,774.33
*8752	Wachovia Crown Classic				886.60
*8765	Wachovia High Performance Money Market - 2				9,024.06
Account No. Cash					
*8035	Wells Fargo Checking				15,218.66
*0502	Wells Fargo Savings				100.00
Account No. Cash					
*3168	Columbia Checking				1,000.00
*3320	Columbia Money Market				49,000.00
*3354	Columbia Household Checking				1,000.00
Account No. Money Market					
09945295049	Vanguard Prime Money Market		4,000.00		4,000.00
Account No. Certificate of Deposit					
288812073639092	Wachovia CD 3-year	30,000.00			33,371.88
Account No. Money Market					
Account No. IRA					

09945295049 Vanguard Growth & Income Fund (0093)	9,000.00	9,000.00
Account No. 401(k)		
MassMutual (RedVision)		62,857.84
Account No. Retirement Account		
State of Washington - PERS II	4,940.98	4,940.98
Account No. Stocks		
09945295049 500 Index Fund Investment (0040)	12,000.00	12,000.00
09945295049 Growth Index Fund Investment (0009)	12,000.00	12,000.00
09945295049 Value Index Fund Investment(0006)	12,000.00	12,000.00
09945295049 Mid-Cap Growth Index Fund (0832)	12,000.00	12,000.00
09945295049 Total International Stock Index (0113)	12,000.00	12,000.00
Account No. Bonds		
09945295049 Total Bond Market Index Investment (0084)	32,000.00	32,000.00
TOTAL ASSETS		306,320.79

Assets	Cash Value	Liabilities
Equity in Fox Island Home	\$347,718.46	
Earnest Money	\$7,000.00	
2008 Lexus RX350	\$35,000.00	
2003 Lexus ES300	\$10,000.00	
Jewelry	\$40,000.00	
Furniture and Household Item:	\$300,000.00	
TOTALS	\$739,718.46	\$ -
NET WORTH FROM ASSETS	\$ 739,718.46	
TOTAL NET WORTH		\$ 1,046,039.25

APPENDIX C

Washington State Residency Definition

(<https://dor.wa.gov/contact-us/washington-state-residency-definition>)

Washington State residency definition

Persons are considered residents of this state for sales and use tax purposes if they take actions which indicate that they intend to live in this state on more than a temporary or transient basis. A person may be considered a resident of this state even though the person is a resident of another state.

The Department of Revenue presumes that a person is a resident of this state if he or she does any of the following:

- Maintains a residence in Washington for personal use;
- Lives in a motor home or vessel which is not permanently attached to any property if the person previously lived in this state and does not have a permanent residence in any other state;
- Is registered to vote in this state;
- Receives benefits under one of Washington's public assistance programs;
- Has a state professional or business license in this state;
- Is attending school in this state and paying tuition as a Washington resident or is a custodial parent with a child attending a public school in this state;
- Uses a Washington address for federal or state taxes;
- Has a Washington State driver's license; or
- Claims Washington as a residence for obtaining a hunting or fishing license, eligibility to hold public office or for judicial actions.

Persons may rebut the presumption of residency if they provide other facts which show that they do not intend to reside in this state on either a temporary or permanent basis. A Washington resident who intends to move at a future date, however, will be considered a Washington resident.

[Washington State Tax and License Fraud Form](#) ^[1]

[Information about Reporting Tax Fraud](#) ^[2]

Source URL: <https://dor.wa.gov/contact-us/washington-state-residency-definition>

Links

[1] <http://suspectfraud.wa.gov/report.html>

[2] <https://dor.wa.gov/contact-us/reporting-washington-state-tax-and-license-fraud>

APPENDIX D

Comparison of Shelly Williams' Individual Assets September 2010 - October 2010

SEPTEMBER 2010**EXHIBIT 15 PAGE 2194**

Account	Current Value
Account No. Cash	
*3720 Wachovia Crown Checking	80,972.23
*5890 Wachovia High Performance Money Market	185,880.33
*8752 Wachovia Crown Classic	1,248.59
* Wachovia High Performance Money Market - 2	87,779.37
*8765 Wachovia High Performance Money Market - 3	9,024.06
*Davies Pearson Redacted Acct. # and Balance	
Account No. Money Market	
09945295049 Vanguard Prime Money Market	4,000.00
Account No. Certificate of Deposit	
37272052580717 Wachovia CD 2-year	11,983.18
Wachovia CD 3-year	33,100.04
Account No. Money Market	
2116990538 Ally Bank	95,094.00 Closed 9/21/2010
Account No. IRA	
09945295049 Vanguard Growth & Income Fund (0093)	9,000.00
Account No. 401(k)	
MassMutual (RedVision)	62,857.84
Account No. Retirement Account	
State of Washington - PERS II	4,940.98
Account No. Stocks	
09945295049 500 Index Fund Investment (0040)	12,000.00
09945295049 Growth Index Fund Investment (0009)	12,000.00
09945295049 Value Index Fund Investment(0006)	12,000.00
09945295049 Mid-Cap Growth Index Fund (0832)	12,000.00
09945295049 Total International Stock Index (0113)	12,000.00
Account No. Bonds	
09945295049 Total Bond Market Index Investment (0084)	32,000.00
TOTAL CASH	677,880.62
9/23/2010 Wire Transfer to Talon Group from Wells Fargo	-347,718.46
9/24/2010 Cash balance after making downpayment	330,162.16

OCTOBER 2010**EXHIBIT 15 PAGE 2202**

Account	Current Value
Account No. Cash	
*3720 Wachovia Crown Checking	1,146.44
*5890 Wachovia High Performance Money Market	22,774.33
*8752 Wachovia Crown Classic	886.60
*8765 Wachovia High Performance Money Market - 2	9,024.06
Account No. Cash	
*8035 Wells Fargo Checking - Opened 9/2010	15,218.66
*0502 Wells Fargo Savings - Opened 9/2010	100.00
Account No. Cash	
*3168 Columbia Checking - Opened 10/2010	1,000.00
*3320 Columbia Money Market - Opened 10/2010	49,000.00
*3354 Columbia Checking - Opened 10/2010	1,000.00
Account No. Money Market	
09945295049 Vanguard Prime Money Market	4,000.00
Account No. Certificate of Deposit	
288812073639092 Wachovia CD 3-year	33,371.88
Account No. IRA	
09945295049 Vanguard Growth & Income Fund (0093)	9,000.00
Account No. 401(k)	
MassMutual (RedVision)	62,857.84
Account No. Retirement Account	
State of Washington - PERS II	4,940.98
Account No. Stocks	
09945295049 500 Index Fund Investment (0040)	12,000.00
09945295049 Growth Index Fund Investment (0009)	12,000.00
09945295049 Value Index Fund Investment(0006)	12,000.00
09945295049 Mid-Cap Growth Index Fund (0832)	12,000.00
09945295049 Total International Stock Index (0113)	12,000.00
Account No. Bonds	
09945295049 Total Bond Market Index Investment (0084)	32,000.00
TOTAL CASH ASSETS AFTER PURCHASE OF 6TH LANE HOME	306,320.79

