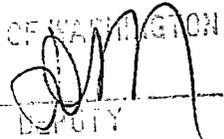


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COURT OF APPEALS
DIVISION II

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COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY  DEPUTY

CATHERINE S. SHUBECK
Respondent

v.

JOHN R. SHUBECK and SHELLY A. WILLIAMS
Appellants

REPLY BRIEF OF APPELLANTS

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I. “INTRODUCTION” IN REPLY

Cathy’s Response Brief is a detailed account of John and Shelly’s financial transactions throughout their 13-year-relationship, claiming that because John gave Shelly checks, which were deposited into Shelly’s separate bank accounts, that it “clearly establishes Mr. Shubeck had a community property interest in these assets.”¹ Cathy completely ignored long-standing Washington case law which identifies that the characterization of property as community or separate is established on the date that asset is purchased.² Cathy does not rebut this fact. Cathy operated under a faulty assumption that the separate property designation can morph into community property if at some point after the purchase, a party contributes toward the expenses of that asset (i.e., real estate taxes, mortgage payments). Cathy treated this fraudulent transfer lawsuit as a dissolution of marriage, trying to prove that if a party made financial contributions during the marriage, that a party could recover some of their financial interest at the time the court divides assets. That is not what this lawsuit about. Should this Court agree with Appellants’ legal arguments that these assets are Shelly’s separate property, then Washington case law is binding that the assets remain Shelly’s separate property, and therefore, no fraudulent transfer occurred.

Cathy operated under yet another faulty assumption. That is, that if Person A gives Person B a check, which Person B then deposits into his/her separate bank account, that separate bank account is now a community bank account and everything purchased from that bank account is now community property to Person A and Person B. That conclusion defies logic. Separate bank accounts remain separate

¹ Response Brief, Page 1

² *In re Brown's Estate*, 124 Wash. 273, 214 Pac. 10; *Rogers v. Joughin*, 152 Wash. 448, 277 Pac. 988; *In re Marriage of Shannon*, 55 Wn. App. 137, 140, 777 P.2d 8 (1989)

unless and *until* the owner of that bank account formally adds a party to the account, transmuting it from a separate account to a joint account. Moreover, John and Shelly's Prenuptial Agreement specifically prohibits converting any of their separate bank accounts into joint bank accounts.³

1. Cathy failed to address the following relevant facts of this case:

A. Shelly brought a million dollars in assets with her to Washington on September 24, 2010, a fact which Cathy tried desperately to hide from the trial court by redacting out entire bank accounts on Shelly's bank statements, stating that "*it is out of scope*"⁴ in order to reduce the amount of money visible to the Court.⁵

B. Shelly purchased the assets for which she corrected titles either *before* she moved to Washington or within six months of arriving, from her separate bank account, resulting in a separate property characterization for each asset.

C. Shelly never changed the characterization from separate to community.

D. Any money John gave to Shelly toward their expenses does not alter the separate property characterization these assets.

2. What Cathy failed to respond to in her Response Brief is very revealing:

A. Cathy provided no rebuttal to the fact that Shelly purchased the 6th Lane Home *before* she moved to Washington State with funds from her separate bank account in West Orange, New Jersey.⁶ This fact automatically makes this asset

³ EX 101

⁴ EX 15, PG 2190

⁵ The non-redacted bank statements are no longer available as they are beyond the bank's seven-year-retention requirement. Therefore, Shelly provided her historical Net Worth Statements from September 2010 and October 2010 to fill in the missing financial information to the trial court, which the trial court allowed. Cathy is now asking the Appellate Court to disregard those same exhibits.

⁶ Brookman v. Durkee, 46 Wash. 578, 90 P. 914, 1907

Shelly's separate property. It negates the community property assumption because John and Shelly were not Washington residents when Shelly purchased this home;

B. Cathy provided no rebuttal to the fact that Shelly purchased the 2005 Shoreland'r Boat Trailer and 2006 Dodge Ram Truck from her separate bank account with the funds she brought from New Jersey and therefore, those assets retain the separate property characterization;

C. Cathy does not claim that John's name was on title to the 2005 Regal Cruiser or the Pilchuck Property, and makes no claim of a fraudulent transfer of those assets;

D. Cathy provided no rebuttal to the fact that Washington case law states that the designation of whether an asset is separate or community property is set on the date that asset is purchased and characterization cannot be changed until the parties show a very clear intent to change the asset designation;

E. Cathy provided no rebuttal to the requirement that the trial court should have traced the funds used in the purchase of each of the assets named in her lawsuit, which clearly demonstrated that Shelly used her separate funds; and

F. Cathy failed to respond to the dozens of citations of relevant case law that support John and Shelly's legal arguments that these assets are Shelly's separate property.

Rather than respond to any of these relevant legal points, Cathy instead created an undocumented, unsupported narrative that she hopes will persuade this Court to not reverse the findings and conclusions of the trial court. There is a fundamental disconnect with Cathy's interpretation of community property vs. separate property. Cathy's entire response brief attempts to identify every dollar John

contributed throughout the 13 years that could be considered his financial interest in Shelly's separate property. That is a faulty interpretation of community vs. separate property. Washington case law is clear. The characterization of property as community or separate is established on the date it is purchased. Everything that happens after that is irrelevant unless Shelly overtly demonstrated an intent to change her separate property to community property. Without that demonstrated intent to transmute her property, there can be no fraudulent transfer.

Throughout Cathy's Response Brief, she makes sweeping accusations that simply are not supported by the evidence in the exhibits. John and Shelly will highlight some of the most severe violations in their reply.

II. "STATEMENT OF THE CASE" IN REPLY

Cathy claims that "*because Appellants failed to provide a verbatim report of proceedings, the findings of fact entered by the trial court are verities and binding upon the Appellate Court.*" However, RAP 10.3(g) states that the appellate court will only review a claimed error which is included in an assignment of error, of which John and Shelly noted there are errors on 27 separate findings of fact. The trial court not only erred, it manifestly abused its discretion. The trial court's findings of fact and conclusions of law fail to persuade a "fair-minded person the premise is true," providing a path for the appellate court to reverse.

A. **Reply to "*Portions of Appellants' amended brief fail to conform to the Rules of Appellate Procedure and should be disregarded.*"**

Cathy makes a redundant claim that John and Shelly's introduction is improper, a point she also raised in her Motion to Strike the Appellants' Appellate

Brief.⁷ There are no page limits on introductions. Appellants are free to use their 50-page limit as they see fit. The Court denied her motion to strike based on that claim. Cathy also claims that John and Shelly inappropriately cited to facts not in the record in their introduction. According to RAC 10.3(a)(3): “*The introduction need not contain citations to the record for authority.*” Cathy made a request for attorney fees for her Motion to Strike, which the Court denied.⁸ Yet, she requests it again.⁹

In order to simplify the concern Cathy has with Shelly’s Net Worth Statement for September 2010, it is included below with direct correlations for each bank account balance to the exact exhibit and page number in Cathy’s bank statement admitted exhibits. These are the separate funds Shelly had just prior to moving to Washington. Since Shelly kept comprehensive records of her net worth, she was able to provide balances for the accounts redacted by Cathy prior to trial.

Table #1 Net Worth Statement of Shelly Williams as of September 14, 2010

ACCOUNT #	ACCOUNT NAME	AMOUNT	EXHIBIT #	PAGE #
*3720	Wachovia Crown Checking	\$80,972.23	15	2194
*5890	Wachovia High Performance Money Market	\$185,880.33	15	2194
*8752	Wachovia Crown Classic	\$1,248.59	15	2194
*1031	Wachovia High Performance Money Market – 2	\$87,779.37	REDACTED 15	2190
*1031	<i>*Davies Pearson Redacted</i>			
*1031	Wachovia High Performance Money Market – 2 Transferred to *3720 September 22, 2010	\$87,830.15 ¹⁰	VERIFIED 15	2203
*8765	Wachovia High Performance Money Market – 3	\$9,024.06	15	2194
Account No.	Certificate of Deposit			
*0717	Wachovia CD 2-year	\$11,983.18	15	2178

⁷ Response Brief, Page 2-3

⁸ Order Striking Appellants’ Brief January 17, 2018

⁹ Response Brief, Page 36

¹⁰ These funds are not included in Shelly’s total funds noted

*5295	Wachovia CD 3-year	\$33,100.04	REDACTED 15	2190
	<i>*Davies Pearson Redacted</i>			
*5295	Wachovia 3-year CD matured 7/20/11 (Post Wells Fargo Acquisition of Wachovia) Moved to Columbia Bank	\$34,727.40 ¹¹	VERIFIED 10 10	1214 1261
Account No.	Money Market			
2116990538	Ally Bank	\$95,094.00	41	2728
	MassMutual (RedVision)	\$62,857.84	OMITTED	
Account No.	Retirement Account			
	State of Washington - PERS II	\$4,940.98	OMITTED	
Account No.	Vanguard Stocks		10	1197
0994529504	Vanguard Bonds		9	927
9	Vanguard Money Market Fund		9	1155
	Vanguard IRA	130,000.00		
TOTAL CASH		\$702,880.62		

Shelly's available cash, per the bank statements submitted by Cathy at trial, verifies that in September 2010, Shelly had a minimum of \$635,081.80. Shelly has \$67,798.82 additional cash from MassMutual and the State of Washington Retirement that was not captured in the banking records submitted at trial. After Shelly contracted to purchase the 6th Lane Home and made the \$347,718.46 down payment, she had a balance of \$287,363.34 of verified separate funds that she brought to Washington and additional unverified funds of \$67,798.82 for a total of \$355,162.16 when she became a resident of Washington on September 24, 2010. Shelly had ample funds to buy the 2005 Regal Cruiser for \$43,060.00 and 2006 Dodge Ram Pick Up Truck for \$26,667.25. While Cathy claimed that Shelly's average income was \$18,000 per year,¹² Cathy's own trial exhibits prove that Shelly received over \$250,000.00 in income from 2011 - 2016, as identified on the following page.

B. Reply to "the findings of fact entered by the trial court are verities and binding on the Appellate Court"

¹¹ These funds are not included in Shelly's total funds noted

¹² Response Brief, Page 36

	INCOME SOURCE	AMOUNT	EXHIBIT #	PAGE #
1	Sale of Streamserve Stock	\$10,465.44	9	938
2	Sale of Streamserve Stock	\$796.76	9	946
	SUBTOTAL	\$11,262.20		
3	Outstanding Bonus - RedVision	\$102,561.00	10	1216
4	Outstanding Bonus - RedVision	\$8,064.39	10	1216
	SUBTOTAL	\$110,625.39		
5	Social Security Disability:	\$46,310.00	9	1085
6		\$524.50	9	1085
7		\$1,683.00	9	1093
8		\$1,788.00	9	1097
9		\$1,788.00	9	1101
10		\$1,788.00	9	1107
11		\$1,788.00	9	1111
12		\$1,788.00	9	1113
13		\$1,788.00	9	1119
14		\$1,815.00	9	1121
15		\$1,815.00	9	1125
16		\$1,815.00	9	1131
17		\$1,815.00	9	1135
18		\$1,815.00	9	1139
19		\$1,815.00	9	1141
20		\$1,815.00	9	1147
21		\$1,815.00	9	1151
22		\$1,815.00	9	1153
23		\$1,815.00	9	1159
24		\$1,815.00	9	1165
25		\$1,838.00	9	1167
26		\$1,846.00	9	1173
27		\$1,846.00	9	1177
28		\$1,846.00	9	1179
29		\$1,846.00	9	1183
30		\$1,846.00	9	1187
31		\$1,846.00	9	1193
32		\$1,846.00	14	2068
33		\$1,846.00	14	2072
34		\$1,846.00	14	2072
35		\$1,846.00	14	2074
36		\$1,846.00	14	2078

	INCOME SOURCE	AMOUNT	EXHIBIT #	PAGE #
37	Social Security Disability:	\$1,846.00	14	2081
38	Continued	\$1,846.00	14	2083
39		\$1,846.00	14	2085
40		\$1,846.00	14	2087
41		\$1,846.00	14	2087
42		\$1,846.00	14	2091
43		\$1,846.00	15	2811
44		\$1,852.00	15	2811
45		\$1,846.00	15	2813
46		\$1,846.00	15	2814
47		\$1,846.00	15	2814
48		\$1,846.00	15	2815
49		\$1,846.00	15	2816
	SUBTOTAL	\$125,358.50		
50	CONSULTING	\$392.00	9	947
51		\$475.00	10	1211
52		\$50.00	10	1213
53		\$392.00	10	1216
54		\$50.00	10	1217
55		\$50.00	11	1477
56		\$0.00	11	1478
57	SUBTOTAL	\$1,409.00		
58	NAUTICAL THREADS	\$38.26	9	946
59		\$44.97	9	952
60		\$70.00	9	953
61		\$400.00	9	956
62		\$60.00	9	957
63		\$50.00	9	958
64		\$175.00	9	959
65		\$25.00	9	960
66		\$73.98	10	1465
67		\$65.28	10	1474
68		\$21.70	10	1475
69		\$87.44	12	1713
70		\$0.00	12	1714
	SUBTOTAL	\$1,111.63		
	ROBERT CUDNEY	\$1,000.00	10	1219
	TOTAL GROSS INCOME	\$250,766.72		

Table #2 Shelly Williams' Income After Moving to Washington State 2010

Cathy claims that because John and Shelly did not provide a verbatim report that the findings of fact are verities and binding upon this Court.¹³ John and Shelly rely solely on exhibits entered as evidence at trial for their appeal because these exhibits and dozens of citations of related case law prove Shelly's separate ownership of each asset listed in Cathy's lawsuit.

The findings of fact are not binding, as Cathy claims. RAP 10.3(g) states:

(g) Special Provision for Assignments of Error...A separate assignment of error for each finding of fact a party contends was improperly made must be included with reference to the finding by number. The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto. (Underline mine)

John and Shelly noted errors in 27 separate findings of fact;¹⁴ therefore, this Court is not bound by those findings of fact.

C. Reply to “the exhibits admitted into evidence at trial closely align with the findings of fact entered by the trial court.”

i. Reply to “Exhibits demonstrating Mr. Shubeck’s interest in the 6th Lane Property”

The Appellants’ Amended Brief, Page 32, examined the case of *Brookman v. Durkee*, 46 Wash. 578, 90 P. 914, 1907, to confirm that the 6th Lane Home is Shelly’s separate property. This is an identical event to Shelly’s purchase of the 6th Lane Home. Cathy did not rebut this legal argument.

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

¹³ Response Brief, Page 4

¹⁴ Appellants’ Amended Brief, Page 12

*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...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**...(Emphasis mine)*

Cathy claims that John has a community property interest in the 6th Lane Home because they were both originally on title to this home.¹⁵ Washington case law defeats that claim *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.

All financial transactions that Cathy documented in her Response Brief related to the 6th Lane Home are irrelevant. The 6th Lane Home was characterized as separate property when Shelly purchased it from a foreign jurisdiction on August 27, 2010.¹⁶ She never chose to change the characterization of this asset and retained it as her separate property through its sale on December 1, 2016.¹⁷

Cathy asserts that John paid nearly all the costs of the home over the years,¹⁸ also irrelevant, ignoring that her own exhibits when totaled, show that Shelly spent significantly more than John, despite the fact that Shelly was on Social Security Disability, earning a fraction of what John earned each year.¹⁹

¹⁵ Response Brief, Page 5

¹⁶ EX 20, PG 2489, 2475

¹⁷ See *In re Marriage of Skarbek*, 100 Wn. App. 444 (2000)

¹⁸ Response Brief, Page 8, Cathy’s unsupported allegation, with no exhibits, reference to the record, or proof

¹⁹ EX 127

Table #3 Expenses Paid Per Year Per Person.^{20,21}

	2011	2012	2013	2014	2015	2016	TOTAL
John	89,782.70	115,682.22	54,824.04	153,206.22	161,721.89	40,805.20	616,022.27
Shelly	101,632.45	0.00	101,027.95	273,121.76	191,396.72	19,446.04	686,624.92
Total	191,415.15	115,682.22	155,851.99	426,327.98	353,118.61	60,251.24	1,302,647.19

In conclusion, the 6th Lane Home was characterized as Shelly's separate property on the date she purchased it as a result of:

1. Shelly purchased the home prior to being a Washington State resident;
2. Shelly used her separate New Jersey funds to purchase the home;
3. Shelly never expressed any intention to change the designation of her home from separate property to community property; and
4. The home is Shelly's separate property by provision in their Prenuptial Agreement.²²

ii. *Reply to "exhibits demonstrating Mr. Shubeck's interest in the Pilchuck Property"*

Cathy states, "*On or about February 24, 2014, at a point in which Mr. Shubeck and Ms. Williams were married, they purchased a vacant piece of land.*"²³

FALSE. Shelly purchased this land independent of John.²⁴ Because Washington is a community property state, Ticor Title required John to sign a quitclaim deed at closing. John was never on title and there was no transfer of interest.²⁵

²⁰EX 9, EX 10, EX 11, EX 12, EX 13, EX 15, EX 16, EX 41

²¹ These expenses were ascertained by taking the sum total of all the expenses paid from Shelly's bank accounts 2011 – March 2016, minus John's financial contributions.

²² EX 101

²³ Response Brief, Page 8

²⁴ Appellants' Amended Brief, Pages 26 – 27

²⁵ EX 114

Cathy states, “*Thereafter, Mr. Shubeck and Ms. Williams began construction on a new home on the Pilchuck Property.*”²⁶ **FALSE.**²⁷ Shelly is the land developer, the general contractor, and the one responsible for contracting with subcontractors and overseeing their work, or she performs the work personally as she is physically able. Shelly has construction experience, having acted as a general contractor on other projects whereas John has no construction experience and only provides assistance when called upon.

Cathy states, “*Mr. Shubeck’s funds and assets were used to construct the home.*”²⁸ *Specifically, Mr. Shubeck and Ms. Williams jointly took out a home equity line of credit to fund construction.*” **FALSE.** Only ***Shelly’s money*** was used to construct the Pilchuck home. Shelly obtained the Home Equity Line of Credit (HELOC) with ***her*** bank and John acted as a co-signor only. Shelly made all the interest payments from her USBank checking account²⁹ and paid off the HELOC when she sold her 6th Lane Home.³⁰ John made no financial contribution.

iii. Reply to “exhibits demonstrating Mr. Shubeck’s interest in the 2003 Lexus ES300, 2006 Dodge Ram Truck, and 2005 Regal Cruiser boat and trailer.”

2003 Lexus ES300: Shelly was given the 2003 Lexus ES300 by her former employer on January 23, 2008.³¹ The car was valued at over \$20,000. Cathy omitted that John purchased a 50% share of this vehicle on November 23, 2008 when he paid Shelly \$10,000, half the value of the car.

²⁶ Response Brief, Page 8, Cathy’s unsupported allegation, with no exhibits, reference to the record, or proof

²⁷ Cathy’s unsupported allegation, with no exhibits, reference to the record, or proof

²⁸ Response Brief, Page 8 – 9, Cathy’s unsupported allegation with no exhibits, reference to the record, or proof

²⁹ EX 18, Pg. 2406 - 2435

³⁰ EX 140, Appellants’ Amended Brief, Page 26 – 27

³¹ EX 119

2005 Regal Cruiser and 2005 Shoreland'r Boat Trailer:³² Cathy makes no claim of fraudulent transfer on the 2005 Regal Cruiser.³³ Shelly purchased the boat and trailer from her separate bank account.³⁴ Both assets are Shelly's separate property.

2006 Dodge Ram Truck:³⁵ Cathy neglected to include that Shelly paid \$21,667.25 by way of a cashier's check from her separate Columbia Bank account to Rainier Dodge.³⁶ Cathy also neglected to include that until the trial, John and Shelly both believed that Shelly paid the entire purchase price of the truck and that once they discovered that John paid the initial \$5,000 down payment through a VISA transaction, Shelly immediately reimbursed John the full \$5,000.

iv. Reply to "exhibits demonstrating fraudulent transfer."

As predicted, Cathy points to the Order of Default on September 27, 2012 as the cause of the alleged fraudulent transfer.³⁷ What she does not reveal is that John had no motive to engage in fraudulent transfer because he paid everything ordered by the New Jersey Court and had no judgment. It was Shelly who chose to correct the titles to her own assets on October 11, 2012 after seeing the nightmare that occurred in the New Jersey Courts.³⁸ Shelly did what was necessary to *protect her own assets*.

Also outlined in these same pages are the extraordinary expenses incurred by John as a result of the Order of Default.³⁹ Because of these costs, he liquidated his USB and Vanguard investment accounts to help him survive these enormous

³² Appellants' Amended Brief, Page 27

³³ Note: John was under no court order to pay alimony to Cathy at the time Shelly's purchased the boat and trailer, nor did he anticipate that he would in the future; therefore, there was no motive for John to attempt to "hide" cash in this asset.

³⁴ EX 10, PG 1247

³⁵ Appellants' Amended Brief, Page 27

³⁶ EX 123

³⁷ Response Brief, Pages 10-14

³⁸ Appellants' Amended Brief, Pages 5-8

³⁹ Appellants' Amended Brief, Pages 5 – 8

unexpected costs and to have money set aside to help weather the new 50% garnishment he was subjected to for all future alimony and child support. Since Shelly paid all the bills, John passed this money on to her to have as a reserve for future expenses. John's contribution to the household bills dropped by more than 50% the year following the New Jersey court decision (Expenses Paid Chart, Page 10), which proves the necessity of providing his investment funds to augment what he was able to contribute the following year, 2013.⁴⁰

Cathy asserts that because of the New Jersey Order of Default, John and Shelly engaged in fraudulent transfer in order to hinder or delay her from receiving her alimony.⁴¹ **FALSE.** Cathy *did not* stop receiving alimony as a result of Shelly correcting her titles. It was not until several years later, on March 7, 2016, that Cathy obtained her very first judgment against John since he began paying support in 2001.

Should this Court affirm the trial court's ruling that these assets are community property, this table shows what interest, if any, John has in the assets on October 11, 2012.

Table #4 Value of Assets on October 11, 2012

809 6 th Lane	Amount	Exhibit #	Page #
Valuation on 10/1/2012	\$688,400.00	107	
Shelly's Traceable Earnest Money Payment	-\$7,000.00	15	2195
Shelly's Traceable Down Payment	-\$347,718.46	41	2719
		105	
Shelly's Traceable Principal Only Payments	-\$44,895.64	110	
Valuation on 10/1/2012 After Tracing	\$288,785.90		
Amount Owed on Mortgage to Wells Fargo 10/11/2012	-\$373,968.23	110	
Net Liability Transferred to Shelly Williams	-\$85,182.33		

⁴⁰ Note: The expenses paid spreadsheet includes the money John contributed from his USB and Vanguard investments accounts.

⁴¹ Cathy's unsupported allegation with no exhibits, reference to the record, or proof

2006 Dodge Ram Pick Up Truck			
Shelly's contribution 4/2011 (81.245% Ownership)	\$21,660.25	124	
John's Contribution 4/2011 (18.7545% Ownership)	\$5,000.00	6	659
Total Purchase Price 4/2011	\$26,660.25		
Value of Truck October 2012 NADA	\$23,081.46		
Shelly's Equity (81.245% Ownership)	\$18,701.46		
John's Equity (18.7545% Ownership) October 2012	\$4,317.00		
Shelly Repaid John \$5,000	<u>-\$5,000.00</u>		
Net Liability Transferred to Shelly Williams	-\$683.00		
2003 Lexus ES300			
		163	
Value of Car November 2008	\$20,000.00		
Edmunds April 2017	\$2,786.00		
Decrease in Value Over 8.5 Years	-\$17,214.00		
Amount of Decrease Per Year	-\$2,025.18		
Total Decrease from November 2008 – October 2012	-\$8,100.72		
Value November 2008	\$20,000.00		
Shelly's Equity November 2008	\$10,000.00		
John's Purchase Price 4/7/2011	\$10,000.00		
Less Depreciation	-\$8,100.72		
Minus Car Repairs Damage from John	-\$2,250.00		
Net Liability Transferred to Shelly Williams	-\$350.72		
2005 Shorland'r Bunk Boat Trailer			
		164	
Purchase Price	\$5,000.00		
NADA April 2017	\$2,245.00		
Decrease in Value Over 6 Years	\$2,755.00		
Amount of Decrease Per Year	-\$459.17		
Total Decrease from April 2011 - October 2012	-\$734.67		
Purchase Price 4/7/2011	\$5,000.00		
Less Depreciation	-\$734.67		
Value on 10/11/2012	\$4,265.33		
50% equity to each party	\$2,132.67		

Table #5 Summary Net Liability Transferred October 11, 2012

809 6th Lane FI, Fox Island, WA	-\$85,182.33
2006 Dodge Ram Pick Up Truck	-\$683.00
2005 Shorland'r Bunk Boat Trailer	\$2,132.67
2003 Lexus ES300	-\$350.72
Net liability transferred to Shelly	-\$84,083.38

Once tracing of funds is applied to the values established, it is clear that the result of Shelly correcting her titles on October 11, 2012, is that John, in fact,

transferred debt to Shelly in the amount of **-\$84,083.38**, as demonstrated above. The correction of these titles cannot be classified as a fraudulent transfer because nothing of value was transferred to Shelly; therefore, it does not meet the definition of an “asset” in the Fraudulent Transfer Statute.

Cathy wrote a fictitious narrative that John and Shelly’s separation is also fraudulent.⁴² What Cathy fails to mention is that John and Shelly made a decision to legally separate in January 2016, at which time, John met with a family law attorney, who advised John that he and Shelly should prepare a Separate Property Agreement in preparation for their pending separation. That contract was executed on January 29, 2016.⁴³ The reason for John and Shelly’s separation was for one purpose only – to preserve Shelly’s health. John and Cathy have had more than 60 court appearances since John and Shelly began dating in 2005. The stress of the continuous litigation is damaging to Shelly’s already fragile health. Shelly decided to separate to distance herself from all the contentious litigation to find peace and to give her body a much needed rest from the constant stress. Because Shelly is unable to work and will likely never be able to work again due to her serious medical condition, John and Shelly settled on legal separation rather than divorce so that Shelly will still have access to health benefits through John’s employer. John and Shelly filed for legal separation on March 8, 2016,⁴⁴ a month before Cathy filed her lawsuit for fraudulent transfer. Neither John nor Shelly could have possibly foreseen that this lawsuit was going to be filed. Shelly corrected the titles nearly four (4) years earlier so they were clearly

⁴² Response Brief, Page 14, Cathy’s unsupported allegation, with no exhibits, reference to the record, or proof

⁴³ EX 50

⁴⁴ CP 210-211

stunned at the turn of events. Once Cathy filed this case, Shelly was now trapped. Shelly had no option but to postpone their physical separation until this litigation ends. Cathy also contends that the spousal maintenance John agreed to pay is fraudulent⁴⁵ despite the fact that Cathy and the trial court have John's Case Information Statement from New Jersey Superior Court along with confirmed back up documentation of those expenses over the previous twelve months, confirming that John and Shelly's monthly expenses at that time were \$20,000 per month. John agreed to pay less than 50% of that amount to help Shelly until she sold her home and was able to reduce her monthly outgo. Cathy composes her own narrative, which in no way resembles the truth, and asserts her theory as though it is fact.

III. "ARGUMENT" IN REPLY

B. Reply to "*the assets in question have never been the separate property of Ms. Williams, and Mr. Shubeck has always had an interest in them.*"

Cathy claims that John and Shelly's "*arguments and conclusions are premised on a misguided and faulty interpretation of the law.*" However, Cathy ignores the 32 citations of case law that demonstrate, time and time again, the assets named in Cathy's lawsuits are Shelly's separate property. For the 6th Lane Home, Cathy ignores *Brookman v. Durkee*, 46 Wash. 578, 90 P. 914, 1907. Cathy raises *In re Marriage of Mueller*, 140 Wn. App. 498, 501, 167, P.3d 568 (2007) which states that all property acquired during marriage is presumptively community property... except when a party can offer clear and convincing evidence that the property was acquired with separate funds."⁴⁶ This is precisely what Shelly did by tracing her separate funds

⁴⁵ Cathy's unsupported allegation, with no exhibits, reference to the record, or proof

⁴⁶ Response Brief, Pages 15-16

from New Jersey to the purchase of the assets. Cathy adds, “*Commingling of separate and community funds may give rise to a presumption that all assets are community property.*”⁴⁷ Cathy agrees that *separate funds* and *community funds* have to be commingled in order to make the presumption that the funds are hopelessly commingled and that the assets purchased from the joint bank accounts are community property! John and Shelly *never* mixed their separate funds with community funds.⁴⁸ There can be no conclusion that their assets are community.

i. Reply to “through tracing, it is clear that Mr. Shubeck’s income and funds were used to purchase and maintain the property.”

Cathy states, “*They argue that because the funds used to purchase assets came from Ms. Williams’ sole bank account, that the assets are forever hers alone.*”⁴⁹ Cathy conceded that the assets purchased came from Shelly’s *sole bank account*. She then cites from *Rustad v. Rustad*, where the Court stated that community or separate character of real property is determined by the character of funds used in its purchase. ***Cathy’s own legal argument and conclusion makes it absolute that the assets are Shelly’s separate property!***

Cathy disagrees that because the assets were paid for from Shelly’s separate bank accounts that the assets are hers alone.⁵⁰ ***That is precisely what case law stipulates.***⁵¹ Separate property (separate bank account) will remain separate property (home, property, boat, truck) “*through all of its changes and transitions*” so long as it can be traced and identified. Shelly did exactly that! Contrary to Cathy’s claim that

⁴⁷ Response Brief, Page 16

⁴⁸ See Appellants’ Amended Brief, Pages 31 – 41

⁴⁹ Response Brief, Page 17

⁵⁰ Response Brief, Page 17

⁵¹ See *In re Estate of Witte*, 21 Wash.2d at 124, 150 P.2d 595; *Baker v. Baker*, 80 Wash.2d 736, 745, 498 P.2d 315 (1972) and *In re Marriage of Pearson-Maines*, 70 Wash. App. 860, 864, 855 P.2d 1210 (1993)

there is a requirement to ascertain who contributed to the deposits in a bank account, there is none.⁵² What a legal nightmare it would be if people could claim ownership to property just because they wrote a check to another person, who then deposited that check into their separate bank account. Ownership of property as we know it, would be complete and utter chaos! Maintaining a separate bank account protects the separate property characterization, which is precisely why Shelly retained all of her separate bank accounts from the time she met John until now, and why the provision is included in their Prenuptial Agreement which states that their separate bank accounts will never be considered joint bank accounts.⁵³

Cathy then turns her attention to evading creditors.⁵⁴ That is not before this Court, nor are any other actions John has taken to attempt to get resolution for the Order of Default in New Jersey. What is before this court is whether or not the property for which Shelly corrected titles in 2012 was her separate property because Shelly traced her separate funds to the purchase of each asset.⁵⁵ Cathy states:

“To the extent the Appellants assert Ms. Williams had ample funds to pay for assets by herself, those arguments should be disregarded as they rely on homemade spreadsheets submitted in the appendix portion of the brief.”⁵⁶

Please review the spreadsheet on Pages 5-6 as the rebuttal to this claim.

Cathy goes on to state:

“Further, even if she had the separate funds to finance everything on her own, which the banking records and tax returns demonstrate she could not, the fact of the matter is that Mr. Shubeck paid for most everything...The banking records demonstrate that Mr. Shubeck was essentially the sole payer of the 6th Lane Property mortgage, property

⁵² Response Brief, Page 17

⁵³ EX 101, Page 2

⁵⁴ Response Brief, Page 18

⁵⁵ See *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).

⁵⁶ Response Brief, Page 19

taxes, household bills, and homeowner's dues. Rent would make him partially responsible for these expenses, not entirely responsible"⁵⁷

FALSE.⁵⁸ Cathy is ignoring the 3,000 pages of banking records that when totaled show that Shelly paid significantly more than John (See chart, Page 10). Cathy is also failing to recognize that Shelly received over \$250,000 in additional income from 2011 to 2016 (See chart, Page 7).

ii. Reply to "Appellants failed to comply with the terms of their Prenuptial Agreement"

Cathy claims the following actions contradicted the terms of John and Shelly's Prenuptial Agreement:

1. *"Mr. Shubeck transferred his interest in the 2003 Lexus ES300, even though per the terms of the Prenuptial Agreement, it was supposed to remain his separate asset."*⁵⁹

FALSE. Nowhere in John and Shelly's Prenuptial Agreement does it state that this vehicle is "supposed to remain" John's separate asset. It only identifies that on August 1, 2009, this car was listed as his separate asset. Once John consumed his equity in the car, it was agreed that he return the car back to Shelly, as she retained 50% ownership of the vehicle.⁶⁰

2. *"Mr. Shubeck was supposed to retain separate possession of his investment accounts."*⁶¹

FALSE. Again, nowhere in John and Shelly's Prenuptial Agreement does it state that John is supposed to retain separate possession of his investment accounts. It

⁵⁷ Response Brief, Page 19

⁵⁸ Cathy's unsupported allegation, with no exhibits, reference to the record, or proof

⁵⁹ Response Brief, Page 20

⁶⁰ See chart on Page 15 for value on October 11, 2012

⁶¹ Response Brief, Page 20

simply states that he currently held those investment accounts at the time they signed their Prenuptial Agreement. John is free to use that money however he sees fit.

3. *“Appellants were supposed to retain separate and distinct accounts, not to be commingled and treated as a joint asset.”*⁶²

FALSE. John and Shelly have done precisely as they agreed. They have only maintained separate and distinct bank accounts throughout their relationship and their marriage. They have never commingled their separate funds with a community account, a joint bank account, or a common fund. That is what the legal definition is of commingling. *See* Appellants’ Amended Brief, Pages 39 – 41.⁶³

4. *“Also, ‘liabilities that are the separate responsibility of either party shall continue to be ONLY the responsibility of that party to pay,’ yet Mr. Shubeck’s funds were used to pay for almost everything...”*⁶⁴

FALSE. Cathy did not produce one exhibit at trial demonstrating that John ever paid for any of Shelly’s personal debts, nor has Cathy submitted an exhibit with her Response Brief proving that John ever paid any of Shelly’s liabilities.⁶⁵

5. *“Appellants also argue that per the Prenuptial Agreement all future homes will be the separate asset of Ms. Williams. It does say that, but the words written in the Prenuptial Agreement do not take precedence over the actions taken by the Appellants, which demonstrate Ms. Williams was not the sole owner of future homes.”*⁶⁶

TRUE. This stipulation is in the Prenuptial Agreement, which is a binding contract. Where Cathy runs afoul, is that her self-serving statements do not take precedence over the provision in the valid Prenuptial Agreement.

⁶² Response Brief, Page 20

⁶³ EX 9, EX 10, EX 11, EX 12, EX 13, EX 15, EX 16, EX 41

⁶⁴ Response Brief, Page 20

⁶⁵ Cathy’s unsupported allegation, with no exhibits, reference to the record, or proof

⁶⁶ Response Brief, Pages 20 – 21

6. “...he transferred his interest in both the 6th Lane Property and Pilchuck Property.”⁶⁷

FALSE. Both of these properties are Shelly’s separate property. Shelly purchased the 6th Lane Home from a foreign jurisdiction. If it is determined by this Court that it is community property, John “transferred” debt to Shelly on October 11, 2012. John had no interest in the Pilchuck Property, as stated in the quitclaim deed, “this deed is given to create the separate property.”⁶⁸

C. Reply to “the transfers were fraudulent and made with intent to hinder, delay, or defraud and are also constructively fraudulent.”

Cathy claims that *Clayton v. Wilson* 168 Wn.2d 57, 227 P.3d 278 (2010) is a similar case because Mr. Wilson, a pedophile, transferred 90.5% of his assets to his wife in a divorce in order to hinder Mr. Clayton from collecting his judgment from Mr. Wilson.⁶⁹ However, what is different between that case and this one is profound. First, Ms. Wilson did not purchase the assets from her own separate funds. Second, the Wilson’s did not have a Prenuptial Agreement spelling out ownership of each of their marital assets. Third, when Mr. Wilson transferred the property to Ms. Wilson, the property had equity; Mr. Wilson transferred something with value. The *Clayton v. Wilson* case bears no resemblance to the case before this Court.

Cathy then points to *Douglas v. Hill*, 148 Wn. App. 760, 199 P.3d 493 (2009) as being a similar case.⁷⁰ The Douglases secured a judgment in excess of \$1.3 million on October 18, 2002, against embezzler Diane Hill, while Diane and her husband were on the title to the property in question. Diane quit claimed her interest

⁶⁷ Response Brief, Page 21

⁶⁸ EX 113

⁶⁹ Response Brief, Page 25

⁷⁰ Response Brief, Page 25-26

in the property on December 12, 2002, two months after the judgment was secured in order to prohibit the Douglas' from collecting their judgment. The *Douglas v. Hill* case bears no resemblance to this case. First, Shelly can prove she purchased the assets from her own funds. Second, John and Shelly have a Prenuptial Agreement executed in 2009 that supports Shelly's separate ownership of these assets. Third, the quit claim deed was executed on October 11, 2012 when there was no judgment entered against John and there was not one until nearly four years later.

Cathy then points to several out-of-state cases where it was found that uncontested divorces can be the basis for a fraudulent transfer.⁷¹ Not one of these cases are similar to John and Shelly's case because:

1. John and Shelly had a Prenuptial Agreement that provided the ownership of their assets; and
2. The assets that Shelly received through their Legal Separation was consistent with their 2009 Prenuptial Agreement; and
3. No property changed hands beyond the provisions of the Prenuptial Agreement at the time they separated in March 2016.

In all cases where there is a finding of fraudulent transfer, there is a fundamental element. A party with a judgment is unable to collect. Their inability to collect is what prompts a fraudulent transfer lawsuit. In this case, John paid everything ordered by the court in 2012, at the time the titles were corrected. When Cathy did obtain a judgment four years later, she quickly began collecting her judgment, which negates her claim of fraudulent transfer. In 2017, Cathy collected

⁷¹ Response Brief, Page 27-28

\$156,000 in current alimony and the aforementioned judgment. There had to be a disruption in her ability to collect her judgment to qualify as a fraudulent transfer.

ii. Reply to “*the transfers are also constructively fraudulent.*”

No consideration was required on October 11, 2012 because as shown on Pages 13-14, Shelly took on additional debt when the titles were corrected. Furthermore, Cathy was not hindered or delayed in receiving alimony because of Shelly’s corrections. Her receipt of alimony went on undisrupted for years thereafter. Cathy states, “*He eventually ceased paying the support and by all means became insolvent, as he refused to pay the support and had no assets of value in which the Plaintiff could collect on.*”⁷² **FALSE.** A judgment was entered against John on March 7, 2016. Cathy immediately filed a garnishment at IBM and began collection of her judgment within 60 days. John was not insolvent and was able to repay the judgment. The transfer of titles nearly four years earlier in no way interfered with Cathy’s ability to collect her judgment. Her judgment was satisfied in the summer of 2017; therefore, the correction of titles was not constructively fraudulent.

iii. Reply to “*the trial court applied values to the transferred property.*”

The trial court failed to trace Shelly’s funds to the 6th Lane Home, the 2006 Dodge Ram, and the 2005 Shorland’s Boat Trailer. The trial court failed to identify the value of the boat trailer and the 2003 Lexus ES300 on October 11, 2012. Cathy does not allege that the 2005 Regal Cruiser was fraudulently transferred. John was never on title to the Pilchuck Property and therefore, there was no transfer. Cathy claims a value of \$1,000,000 on a partially constructed home with not one exhibit to

⁷² Response Brief, Page 28

support that claim. The claims on those assets should be dismissed. Cathy included multiple assets in her lawsuit that she does not claim were fraudulently transferred, and then attempts to include their value in the scope of the judgment.

iv. Reply to “Ms. Williams must remain personally liable on the fraudulent transfer judgment in the event Mr. Shubeck stops paying spousal support again.”

Please refer to CP 251-270, CP 283-291, CP 294-303 for review of arguments against this ruling holding Shelly personally liable for all future alimony payments.

Cathy claims that John and Shelly said at trial that:

“after witnessing what happened in the New Jersey proceeding, they decided to secure their various assets they had purchased by transferring title to Ms. Williams in order to keep them out of the reach of Ms. Shubeck.”⁷³

FALSE. Shelly is the only party who made that statement about *her own assets*. Cathy did not provide a verbatim record of the trial so she should not even make this claim without support from the record. John and Shelly never conspired to keep assets from Cathy. Shelly did what was necessary to protect her own assets.⁷⁴

Cathy then goes on to state:

“Appellants have also failed to provide this Court with a full record on review, presumably hoping to prevent the Court from reading the testimony given at trial, which further favors Ms. Shubeck.”⁷⁵

FALSE. Appellants are not required to provide a verbatim report. If Cathy believed that this report would help her and hurt John and Shelly, she was free to ask the Court to direct them to provide a verbatim record and to require them to pay for it.⁷⁶ She

⁷³ Response Brief, Page 31, Cathy’s unsupported allegation, with no exhibits, reference to the record, or proof

⁷⁴ Appellants’ Amended Brief, Page 8

⁷⁵ Response Brief, Page 37

⁷⁶ See Appellants’ Response to Respondent’s Motion to Strike Appellants’ Brief, for Attorney Fees, and for Extension of Time, Dated January 16, 2018

chose to not file that motion and also chose to not provide a verbatim report herself. The Court cannot assume that the testimony favors Cathy, as she suggests.

D. Reply to “Ms. Shubeck is entitled to her reasonable attorney fees and expenses on appeal”

In response to Cathy’s request for expenses on appeal, her motion should be denied. When John and Shelly fought for the trial court to identify the specific judgment and what portion of that judgment was Shelly’s responsibility through post trial litigation,⁷⁷ Cathy rigorously resisted. In fact, Cathy stated that she intended to keep Shelly on the hook forever.⁷⁸ Her resistance forced John and Shelly to have to pursue litigation further by filing this appeal. Now that Cathy has read their trial brief with overwhelming legal arguments that support that the assets are Shelly’s separate property, Cathy quite surprisingly concedes that the trial court erred in not defining the judgment and that remand is appropriate.⁷⁹ Cathy appears to be willing to accept a remand as a damage control strategy, in hopes of not having the fraudulent transfer judgments reversed. Since Cathy, unprompted, acknowledged that the trial court erred, she cannot then claim that this appeal was frivolous and seek attorney fees.

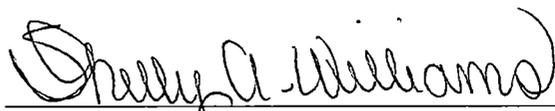
IV. “CONCLUSION” IN REPLY

John and Shelly ask this Court to reverse the trial court’s conclusion that they engaged in fraudulent transfer and vacate the associated judgments.

March 26, 2018

Respectfully submitted,


John R. Shubeck, Appellant Pro Se


Shelly A. Williams, Appellant Pro Se

⁷⁷ CP 251-270, CP 283-291, CP 294-303

⁷⁸ Appellants’ Amended Brief, Page 48-49

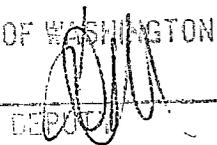
⁷⁹ Response Brief, Page 32-33

FILED
COURT OF APPEALS
DIVISION II

2018 MAR 26 PM 3: 53

STATE OF WASHINGTON

BY



COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

CATHERINE S. SHUBECK,	:
	:
Respondent,	:
	:
vs.	:
	:
JOHN R. SHUBECK AND SHELLY A.	:
WILLIAMS	:
Appellants.	:
_____	:

No. 50979-2-II

CERTIFICATE OF PERSONAL DELIVERY

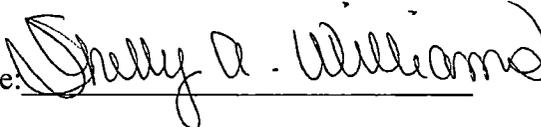
I certify under penalty of perjury under the laws of the State of Washington that, on the date below, I did the following:

On the 26st day of March, 2018, I hand delivered a true copy of a REPLY BRIEF OF APPELLANTS filed in this matter to Thomas L. Dashiell, attorney for the Respondent, at the following address:

920 Fawcett Ave., Tacoma, Washington 98402.

Dated this 26st day of March, 2018, Fox Island, Washington.

Dated: March 26, 2018

Signature: 

SHELLY A. WILLIAMS
Appellant, Pro se