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No. 53768-1-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

DAWN HILL,

Appellant,

v.

JOSEPH MACK,

Respondent.

APPELLANT'S OPENING BRIEF

Matthew J. Ley, WSBA #46074
McGavick Graves, P.S.
Attorney for Appellant
1102 Broadway, Suite 500
Tacoma, WA 98402
Telephone (253) 627-1181
Facsimile (253) 627-2247

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COMES NOW Appellant, Dawn Hill, (“Ms. Hill”), and hereby submits Appellant’s Opening Brief.

I. INTRODUCTION

The parties agreed to resolve a previous dispute by establishing a schedule of payments by Joseph Mack. When he failed to make those payments within the time allotted, Dawn Hill sought to enforce the agreement, which stated that she would own the property until he made his payments. The trial court determined that their agreement would not be enforced, and that Mr. Mack would not have to pay the amount agreed upon. This Court should correct this erroneous conclusion.

II. ASSIGNMENT OF ERROR AND ISSUES RELATING TO ASSIGNMENT OF ERROR

A. Ms. Hill makes the following assignment of error:

1. The trial court erred when it found that the Settlement Agreement contemplated the objective that Ms. Hill would acquire an equitable mortgage on the property in dispute.
2. The trial court erred when it concluded that Mr. Mack retained full title to the property in dispute after entering into the Settlement Agreement.

3. The trial court erred when it concluded that its findings supported the conclusion that Ms. Hill had manifested her intent to repudiate the Settlement Agreement.
4. The trial court erred in finding that Mr. Mack had not failed to perform under the Settlement Agreement when Ms. Hill gave notice to pay or vacate.
5. The trial court erred in concluding that Ms. Hill's actions constituted anticipatory repudiation of the Settlement Agreement.
6. The trial court erred in concluding that Mr. Mack's allegation supported the conclusion that the unidentified HUD loan was an obligation belonging to Ms. Hill.
7. The trial court erred in granting Mr. Mack's counterclaim for an offset of the HUD loan.
8. The trial court erred in ordering that Ms. Hill's equitable lien on the subject property would be subject to a condition precedent.
9. The trial court erred in ordering Ms. Hill to accept a promissory note and deed of trust granted by Mr. Mack.
10. The trial court erred in denying interest on the amounts owed by Mr. Mack.

11. The trial court erred in refusing to grant a judgment in favor of Ms. Hill on the amounts owed by Mr. Mack.

12. The trial court erred in granting judgment quieting title to the subject property in favor of Mr. Mack.

B. Issues relating to the assignment of error:

1. Whether Ms. Hill has superior title to the subject property based on the agreement of the parties.

2. Whether issuing a pay or vacate notice in the face of delinquent payments is an act seeking enforcement of the settlement agreement.

3. Whether a concession that Judgment with interest should accrue should be enforced as ordered by the court.

4. Whether an offset in favor of Mr. Mack should be denied in the face of insufficient evidence of the offsetting obligation.

III. STATEMENT OF THE CASE

A. Factual Background.

There is little dispute about the underlying facts in this case. The parties agree that they were married on September 28, 2001, and that at the time of their marriage, Ms. Dawn Hill, formerly known as Dawn Spain-Mack, was in the process of purchasing a mobile home and real property (together hereafter “the Property”) on which to place that home.

CP 67. Shortly after they were married, Mr. Mack released any interest he had in the real property by quit claim deed. CP 67.

After a tumultuous marriage, Mr. Mack filed for a divorce in January 2014. RP 60. Mr. Mack was granted a divorce by default on May 29, 2014. CP 68. Ms. Hill filed an appeal contesting the property division in June 2014. CP 68; RP 28-29. During the pendency of the appeal, the parties reached an agreement to resolve their disputes concerning support, the Property, and the expenses for Ms. Hill's name change. RP 31, CP 25. The agreement was reduced to writing, and signed by the parties, with acknowledgements before a notary. CP 25, RP 40-42, 62. Shortly after signing the agreement, Ms. Hill requested that her appellate case be dismissed. RP 31-32.

The parties agreed that the settlement agreement required Mr. Mack to make a series of payments. CP 25, 68. The payments consisted of monthly spousal maintenance payments that were termed child support in their settlement contract, and payments to buy out Ms. Hill's interest in the Property. CP 25, 68. The parties agreed that Mr. Mack began making the payments required by the settlement agreement, but stopped making any payments after about two months. RP 42, 69-73.

The parties dispute why Mr. Mack stopped making the required payments. The records show that in the first two months, Mr. Mack made

property payments at the beginning of the month, and weekly installments for the maintenance payments. RP 42, 69-73. Mr. Mack did not make a Property payment at the start of October 2014, but continued making weekly maintenance payments. RP 83-84, 87. Ms. Hill testified that she asked Mr. Mack if he would be making the Property payment, and that he refused. RP 48, 51. Mr. Mack agreed that he did not make a payment at the beginning of October 2014. RP 83-84

Ms. Hill had a notice to pay or vacate posted on the property, where Mr. Mack was residing, near the end of October 2014. RP 48, 73. Mr. Mack testified that once that notice was given, he elected to stop making either the Property payment or the maintenance payment. RP 73. Ms. Hill followed through with attempting to secure an eviction, only to learn that there was no legal basis for an eviction because Mr. Mack had been awarded the Property in the divorce decree, which had not been modified following dismissal of her appeal. RP 43. This was discovered in December 2014. RP 43.

Ms. Hill brought this action after the payment schedule in the settlement agreement was complete. In her complaint, she sought to quiet title to the property in her name, based on the clear terms of the settlement agreement. CP 2. Mr. Mack responded, acknowledging his obligation, but asking the court to order that payments should be made as required by

the settlement agreement, along with an offset for an alleged HUD loan that was in Ms. Hill's name, secured by the property in question. CP 30-34.

B. Procedural Background

Trial in this matter took place on February 25, 2019. CP 46. The trial took one day, involving testimony from the parties, and submission of exhibits documenting the agreement and payments that had been made. CP 46. At the close of evidence, counsel for Ms. Hill requested the Court find that she held superior equitable title to the property, or in the alternative to grant a judgment for the unpaid amount owing per the terms of the settlement agreement, with statutory interest calculated from the first of each month in which payments were not made. RP 96-105. Counsel for Mr. Mack agreed that payments should be made for the spousal maintenance obligations, and that the Court should deny the request to quiet title in favor of Ms. Hill, instead granting a judgment for the unpaid amounts owing on the settlement agreement, with interest. RP 105-114.

Following closing arguments, the Court requested supplemental briefing from the parties. RP 119. The court asked the parties to provide briefing about the status of title to the property through the divorce and settlement agreement, with particular emphasis on the distinction between

legal and equitable title. RP 119-20. The court also introduced, sua sponte, a question concerning anticipatory breach of contract, and the ability of the court to supply terms in an agreement for what should happen in a default. RP 120. The parties agreed that the briefing requested was primarily in the form of legal analysis that would not require responses, due to the limited scope of anticipated argument. RP 124-25.

In supplemental briefing, counsel for Mr. Mack for the first time argued that there had been anticipatory breach by Ms. Hill and that interest should not be awarded for the unpaid amounts. CP 55. He also argued that mortgage payments made by Mr. Mack should be an offset against any financial obligation to Ms. Hill, an argument that was identified for trial, but was not made during the course of trial. CP 56, RP 115.

The court was persuaded by the arguments of counsel for Mr. Mack, and issued a letter ruling, finding that legal title remained with Ms. Hill, but that Mr. Mack had superior equitable title to the property, that the settlement agreement was a binding contract, and that Ms. Hill had anticipatorily repudiated the settlement agreement, but that Mr. Mack still owed past-due maintenance to Ms. Hill. CP 67-70. The court ruled that Mr. Mack would be required to make payments on a schedule similar to the one originally proposed in the settlement agreement, but with an offset

for a HUD loan which Mr. Mack claimed Ms. Hill had taken out at some time. CP 69-70.

Counsel for Ms. Hill moved for reconsideration, which was granted, in part because counsel for Mr. Mack changed his position regarding the issue of whether a decree of divorce conveys legal title to property within the State of Washington. CP 91-93. The court ordered that a judgment would be entered in favor of Ms. Hill for the outstanding Property obligation, subject to an offset for any HUD loan obtained by Ms. Hill when she did not own the property, that enforcement of the judgment would be held in abeyance so long as Mr. Mack made payments according to the court's proposed schedule, and that the effect of the settlement agreement was to create an equitable lien against the property in favor of Ms. Hill. CP 91-93. The findings of fact, conclusions of law, and final judgment were to be prepared by counsel for Mr. Mack. CP 93.

The Findings of Fact and Conclusions of Law were prepared by counsel for Mr. Mack. In preparing these documents, counsel for Mr. Mack proposed transforming the ordered judgment into a promissory note and deed of trust in favor of Ms. Hill for the amounts set forth by the court, removed the provision concerning the timing of any HUD loan that served as an offset in favor of Mr. Mack, and imposed a requirement that Ms. Hill take affirmative steps to prove the existence and amount of the

alleged HUD loan. CP 97-134. After initial presentation, at which time edits were made to the findings concerning the nature and basis for Ms. Hill's equitable lien, the court signed the orders as prepared by counsel for Mr. Mack. CP 135-54.

This appeal was filed on behalf of Ms. Hill on a timely basis.

IV. ARGUMENT

A. Standard of Review

The standard of review is complicated in this matter. The primary issue, pertaining to quieting title to the disputed property, is a matter of equity. *Kobza v. Tripp*, 105 Wn. App. 90, 95, 18 P.3d 621 (2001). Whether or not equitable relief is appropriate is a question of law reviewed de novo. *Bank of Am., NA v. Prestance Corp.*, 160 Wn.2d 560, 564, 160 P.3d 17 (2007). Likewise, conclusions of law, even when misidentified as findings of fact, are subject to de novo review. *Grundy v. Brack Family Trust*, 151 Wn. App. 557, 567, 213 P.3d 619 (2009).

The standard of review for issues surrounding the entry of judgment is more complicated. The trial court's determination that final orders presented before it for entry conform to its ruling should be reviewed for abuse of discretion, although there is no case law directly on point. The decision to deny prejudgment interest is reviewed for an abuse of discretion. *TJ Landco, LLC v. Harley C. Douglass, Inc.*, 186 Wn. App. 249, 256, 346

P.3d 777 (2015). Both are exercises of the trial court's authority in light of the circumstances of trial. But, the sufficiency of the pleadings to support the relief granted is a question reviewed de novo, as an application of court rule to facts. *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 525, 79 P.3d 1154 (2003). To the extent that factual findings are contested, they are subject to review to determine whether those findings are supported by substantial evidence. *Spicer v. Patnode*, 9 Wn. App. 2d 283, 297, 443 P.3d 801 (2019).

B. The Trial Court Erred by Refusing to Quiet Title in Favor of Ms. Hill.

The trial court erred in refusing to quiet title in favor of Ms. Hill.

A quiet title action is an equitable proceeding authorized by statute.

Kobza v. Tripp, 105 Wn. App. 90, 95, 18 P.3d 621 (2001). The obligation of the court in a quiet title action is to declare that title to real property rests with the person who has the superior equitable claim to the property.

See id. The superior title, whether legal or equitable is to prevail. *See Finch v. Matthews*, 74 Wn.2d 161, 166, 443 P.2d 833 (1968).

The effect of the settlement agreement between the parties is to give Ms. Hill superior equitable title over the property. The language of the settlement agreement reveals an intent to form a real estate contract. CP 25. In a real estate contract, the parties agree that title remains with

the seller until the payment obligations are completed, at which time she is obligated to convey title to the purchaser. *State v. Wooten*, 178 Wn.2d 890, 895, 312 P.3d 41 (2013). This is in contrast to a mortgage, which is a security interest in property owned by the mortgagor to assure payment of an obligation. *See Kiem v. Washington Mut. Bank*, 176 Wn.2d 771, 782, 295 P.3d 1179 (2013). The language of the settlement agreement does not involve separate financial obligations that are secured by title to the property. CP 25. The settlement agreement states that the property will be held in Ms. Hill's name, subject to purchase by Mr. Mack. CP 25. Mr. Mack failed to make the payments as promised, and refused to make payments although given opportunity by the pay or vacate notice. RP 83-84.

This case was made more complicated because of a lack of clarity about the conveyance of legal title between the parties prior to their separation agreement. There is no dispute that the property was the separate property of Ms. Hill during the marriage of the parties. CP 67. Although not clearly characterized in the decree of dissolution obtained by Mr. Mack, the property was awarded to Mr. Mack through the divorce proceedings. CP 68. Regardless of whether the court properly characterized the property in the course of the divorce proceedings, it had the authority to make an equitable award of all of the property belonging

to the parties. *Brewer v. Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999).

The effect of the decree was to award legal title to the property to Mr. Mack, subject to existing liens in favor of third parties. *In re Marriage of Penry*, 119, Wn. App. 799, 803, 82 P.3d 1231 (2004). This point was unclear to the court, and the subject of its reconsideration ruling. CP 85, 92. In its original ruling, the trial court concluded that the decree of dissolution could not convey legal title to the property. CP 68. This was in accord with the arguments presented by counsel for Mr. Mack. CP 48. This foundational error had a detrimental effect on the remaining conclusions of the court, although the court made efforts to effectuate its original ruling which had been based on an erroneous reading of case law. CP 92, Report of Proceedings for Motion for Reconsideration 23-28.

The parties having eventually agreed, and the trial court concurring, that legal title was conveyed to Mr. Mack by the decree of dissolution, the question is what, if any, form of title was received by Ms. Hill by the operation of the settlement agreement. The settlement agreement does not include a legal description of the property, relying solely on an address to describe the property. CP 25. This description is not sufficient to effect a conveyance of property, although the remaining requirements of a conveyance were all present in the settlement

agreement. *See Halbert v. Forney*, 88 Wn. App. 669, 672, 945 P.2d 1137 (1997).

In a circumstance such as this, although legal title cannot be conveyed due to deficient documentation, there is a conveyance of equitable title. Thus, in *Fleishbein*, the Court held that the failure to properly document a mortgage interest in property based on a personal loan would not preclude securing the loan through an equitable lien on the underlying property. *Fleishbein v. Thorne*, 193 Wn. 65, 73, 74 P.2d 880 (1937) Thus, where there is a deficiency in the procedure that precludes the conveyance of a legal claim, equity may recognize the rights of a party to property.

In this case, there is a contract that clearly asserts that title to the property would belong to Ms. Hill, pending payment of a specified amount on a specified schedule. CP 25. The record is in writing and acknowledged, including all of the relevant terms, lacking only the legal description. CP 25; *see* RCW 64.04.020. Were this document to include a legal description, it would be enforceable as a conveyance of title to Ms. Hill, and a real estate contract in favor of Mr. Mack. The property would belong to Ms. Hill until payment was completed. Because the deficient legal description, the settlement agreement failed to convey legal title. In these circumstances, the Court should recognize that it did in fact convey

equitable title to the property, in accord with the agreement between the only parties of interest.

The Court's obligation in a quiet title action is to declare that property belongs to the party with superior title. RCW 7.28.120. The claim of title is to rest on the claims of the parties themselves. The parties here have acknowledged that any title claims are subject to mortgages predating the divorce and settlement agreement. Between the parties, superior title clearly rests with Ms. Hill. Mr. Mack promised that title would rest with Ms. Hill. He promised to make payments in order to purchase her claim on the property. He failed to make those payments, even after being provided notice of delinquency. He chose not to make payments. Although real estate contracts are not generally forfeited without an opportunity to cure, the extent of time without payments, the minimal number of payments made, and the refusal to make payments on demand in the face of delinquency all stand in opposition to allowing further opportunity to cure. Mr. Mack had his opportunity to make payments, and refused.

The trial court should have concluded that superior title belongs to Ms. Hill. As a conclusion of law, and a matter of equitable relief, this Court has the authority to review this issue de novo to correct that error. *See Bank of Am., NA v. Prestance Corp.*, 160 Wn.2d 560, 564, 160 P.3d

17 (2007), *see also Grundy v. Brack Family Trust*, 151 Wn. App. 557, 567, 213 P.3d 619 (2009). The matter should be remanded to the trial court with instructions that title to the property should be quieted in favor of Ms. Hill.

C. The Trial Court Erred by Concluding that Ms. Hill Repudiated the Settlement Agreement.

The trial court erred in concluding that Ms. Hill repudiated the settlement agreement. Though titled as a finding of fact, this is a conclusion of law subject to de novo review. *See Grundy v. Brack Family Trust*, 151 Wn. App. 557, 567, 213 P.3d 619 (2009). The trial court first erroneously found that Ms. Hill issued a notice to pay or vacate before there was any obligation to make a payment. It ignored the uncontested testimony that she requested payment from Mr. Mack before giving the notice, and that Mr. Mack refused. RP 48. Regardless, even if the trial court ignored this evidence because of undisclosed determinations about credibility, it failed to address the factual assertions of Mr. Mack himself. Based on Mr. Mack's own testimony, presuming the trial court found him credible, the trial court should have found that his payments were untimely. Mr. Mack admitted that he did not make payments for the property in a timely manner in October 2014, after having established a pattern of conduct that payments would be made no later than the 6th of

the month. RP 73, 84. He testified that he did not receive a pay or vacate notice until the end of the month. RP 83. This course of performance is sufficient to establish that his payment was past due by the time he received the pay or vacate notice. *Spradlin Rock Products, Inc. v. Public Utility Dist. No. 1 of Grays Harbor County*, 164 Wn. App. 641, 660-61, 266 P.3d 229 (2011). Further, he testified that upon receipt of the pay or vacate notice, he elected not to make any further payments under the contract. RP 73.

Repudiation of a contract occurs where there is a clear act that unequivocally indicates refusal to perform contractual obligations. *Grant County Port Dist. No. 9 v Washington Tire Corp.*, 187 Wn. App. 222, 231-32, 349 P.3d 889 (2015). The issuance of a notice to pay or vacate does not reveal intent by Ms. Hill that she would not be bound by the terms of the settlement agreement. It is a very clear step that she wished to enforce the terms of the settlement agreement. *See Christensen v. Ellsworth*, 162 Wn.2d 365, 371, 173 P.3d 228 (2007). By its nature, a notice to pay or vacate is a warning that a payment is overdue, and needs to be made. *See id.* Mr. Mack elected not to make any payment, claiming that the request for a payment was an indication by Ms. Hill that she would not comply with her promise to release any cloud on the title to the property upon

complete payment in accordance with the terms of the settlement agreement. RP 83.

The trial court's decision is a conclusion of law, misidentified as a finding of fact. It is subject to de novo review. *Grundy v. Brack Family Trust*, 151 Wn. App. 557, 567, 213 P.3d 619 (2009). The trial court erroneously concluded that these actions constitute anticipatory repudiation of the contract.

D. The Trial Court Erred by Refusing to Enter a Judgment in Favor of Ms. Hill.

The trial court erred in refusing to grant a judgment in favor of Ms. Hill. The grant of injunctive relief against Ms. Hill was contrary to the pleadings and argument of the defendant. The trial court further erred when it ruled that interest would not be applied to Mr. Mack's unpaid financial obligations.

Trial in this matter was focused on one critical issue: how to characterize the relief available for a failure to make payments under the settlement agreement. The settlement agreement included two obligations: (1) an obligation to pay maintenance to Ms. Hill, and (2) a promise to pay money to purchase the Property from Ms. Hill. RP 113-114. Mr. Mack agreed that he had failed to fulfill his obligation to pay maintenance. RP 87. At the conclusion of trial, Mr. Mack agreed that he

had failed in this obligation, and that judgment on the amounts that he owed was appropriate. RP 111. The focus of Mr. Mack's argument was that the provisions of the settlement agreement concerning the property payments should be treated as an unsecured payment obligation, which should be reduced to judgment. RP 106. At trial, Mr. Mack specifically waived any argument that the judgment should be entered without interest as a consequence of this admission. RP 111.

Following the conclusion of trial, Mr. Mack first raised the prospect of an award of judgment without interest in supplemental briefing. CP 55. Mr. Mack still argued that judgment should be entered in favor of Ms. Hill for the unpaid amounts. CP 55. It was only upon presentation of findings and conclusions that Mr. Mack took the position that a form of injunctive relief was appropriate, which required Ms. Hill to perform specific actions in order to be granted a promissory note, secured by a proposed deed of trust, for the unpaid obligations. CP 107.

Although it is arguable that the trial court may award relief that is not specifically included in the pleadings, it is unconscionable to grant relief that was specifically rejected in the course of trial by a party. In this case, Mr. Mack argued that a judgment should be entered in favor of Ms. Hill. RP 114, CP 55-56. He admitted that the intent was to pay interest on his obligations. *See* RP 110-11. The court ordered that a judgment in

favor of Ms. Hill would be entered, based on that argument. CP 69-70, 93. Yet, no judgment was entered, rather a form of injunctive relief was granted. CP 143-144.

The relief granted by the trial court is outside of the scope of relief plead by Mr. Mack. The trial court is only authorized to grant relief to which there is adequate notice. *See MacLean v. Bellingham*, 41 Wn. App. 700, 707, 705 P.2d 1232, *vacated and remanded on other grounds*, 475 U.S. 1105, 106 S.Ct. 1509, 89 L.Ed.2d 909 (1986). Although the notice pleading requirements of this state encourage liberal interpretation of pleadings, they must at least provide notice of the legal theories for relief. *Dewey v. Tacoma School Dist. No. 10*, 95 Wn. App. 18, 25, 974 P.2d 847 (1999). The determination whether the pleadings support the relief granted is reviewed de novo. *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 525, 79 P.3d 1154 (2003). The relief granted exceeds what is sought by the pleadings in this matter. Mr. Mack asked for a judgment in his pleadings, not specific performance or any other form of injunctive relief. CP 34. It is an error to allow him to reject that request to seek a more favorable outcome after trial. This is particularly so after having argued and pursued trial on the theory that a judgment was the only relief sought.

Further, the refusal to grant an award of prejudgment interest was an abuse of discretion. Prejudgment interest is proper when a claim is for a liquidated amount. Prejudgment interest is favored by the courts. *Spradlin Rock Products, Inc. v. Public Utility Dist. No. 1 of Grays Harbor County*, 164 Wn. App. 641, 655, 266 P.3d 229 (2011). The purpose is to compensate a party for the loss of use of money withheld by another party. *See TJ Landco, LLC v. Harley C. Douglass, Inc.*, 186 Wn. App. 249, 256, 346 P.3d 777 (2015). It is appropriate any time the amount of the obligation may be calculated with exactness, regardless of whether there is a dispute about whether the money is owed. *Spradlin Rock*, 164 Wn. App. at 665.

As stated above: Mr. Mack's position during trial was that he should be required to pay the amounts owed, with interest, including prejudgment interest. RP 106, 111. He acknowledged that he had not fulfilled his payment obligations. RP 73, 111. The court abused its discretion in refusing to grant prejudgment interest. Based on the facts, law, and unequivocal testimony of the parties.

E. The Trial Court Erred by Granting an Offset in Favor of Mr. Mack.

Finally, the trial court erred in granted an offset for an unspecified, unvalued HUD loan on the property. Mr. Mack alleged in a counterclaim that Ms. Hill had taken out a second mortgage without notice to him. CP

34. He alleged an approximate value, but did not make any allegations regarding when the loan was taken out by Ms. Hill. CP 34. The trial court concluded that the failure to controvert the assertion that Ms. Hill had at some indefinite time taken out a HUD loan was sufficient basis to grant the relief requested by Mr. Mack.

The failure to deny assertions in pleadings is treated as agreement to the factual information contained in those pleadings. CR 8(d). It does not imply agreement that the facts support a claim for relief. *See Kaye v. Lowe's HIW, Inc.*, 158 Wn. App. 320, 326, 242 P.3d 27 (2010). Because critical facts were not asserted by Mr. Mack, there is no basis for the relief that was granted.

Counsel for Mr. Mack requested, and was granted, a motion in limine declaring that this case would not be treated as a method to modify the previous divorce proceedings between the parties. RP 11-12. In those divorce proceedings, the final decree directed that Mr. Mack would pay all obligations secured by property awarded to him, including what had been the family home. CP 18. Because there is no modification of the divorce decree available in this matter, the date on which Ms. Hill took out the alleged HUD loan is meaningful. If the HUD loan predated the divorce, it is outside of the scope of relief available to Mr. Mack in this case.

Conversely, if the loan were taken after the decree, then there would be reasonable basis to conclude that relief should be granted.

Mr. Mack did not raise the issue in the course of trial. There was no evidence at trial concerning any HUD loan taken out against the property by Ms. Hill. Without evidence, there is no basis for determining the value of the alleged HUD loan, or the date of the loan. *See Greensun Group, LLC v. City of Bellevue*, 7 Wn. App. 2d 754, 776, 436 P.3d 397 (2019). Lacking such evidence, and lacking any uncontroverted allegations to this point, the trial court had no basis in fact for determining that the alleged HUD loan was taken out after the decree of dissolution was entered. Recognizing this issue, the trial court ordered that the offset would only apply to any HUD loan post-dating the divorce decree. CP 93. This order was changed on presentation, when counsel for Mr. Mack demanded that a full offset should be granted for any HUD loan, of any date. CP 116. The result is that the final orders now grant a modification of the decree of dissolution by changing the obligation on debts before the court at that time.

The decree itself is a final order of the Court. It may not be amended without compliance with the procedures set forth in CR 60 for vacating and reopening the judgment of the court. *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999). Mr. Mack did

not seek to reopen the underlying divorce proceedings, in fact arguing specifically that those proceedings should not be revisited. RP 5. The evidence is not sufficient to support the relief granted. *Spicer v. Patnode*, 9 Wn. App. 2d 283, 297, 443 P.3d 801 (2019). Therefore the Court should remand with instructions to the trial court that an offset may not be granted.

V. CONCLUSION

For the reasons set forth in this brief, Ms. Hill requests the Court to reverse the trial court's decisions, and to remand this case with instructions to enter orders granting her requested relief.

DATED this 23rd day of January 2020.

MCGAVICK GRAVES, P.S.

By: 
Matthew J. Ley, WSBA #46074
Of Attorneys for Appellant

DECLARATION OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I served a copy of the foregoing Appellant's Opening Brief to:

Gregory D. Esau
J. Connor Rankin
Ellis Li & McKinstry, PLLC
2025 First Ave, Penthouse A
Seattle, WA 98121
gesau@elmlaw.com

Signed at Tacoma, Washington this 23rd day of January 2020.

McGAVICK GRAVES, P.S.

By: 
Matthew J. Ley

MCGAVICK GRAVES, P.S.

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