

FILED

JUL 05 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By.....

NO. 31073-6-III

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

In re the Marriage of:

GENE EDWARD WELTON,

Appellant,

and

MARINA MARTIN-WELTON,

Respondent.

REPLY RE CROSS APPEAL

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TABLE OF CONTENTS

REPLY ON CROSS APPEAL	1
CONCLUSION.....	3

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Cowiche Canyon Conservancy v. Bosley,</i> 118 Wn.2d 801, 809, 828 P.2d 549 (1992).....	3
<i>In re Marriage of Littlefield,</i> 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).....	2
<i>In re Marriage of Muhammad,</i> 153 Wn.2d 795, 108 P.3d 779 (2005).....	2
<i>In re Marriage of Washburn,</i> 101 Wn.2d 168, 179, 677 P.2d 152 (1984).....	1
STATUTES	
RCW 26.09.080.....	1

REPLY ON CROSS APPEAL

Aside from raising a series of arguments for the first time in his Reply Brief, none of which this Court should consider, Mr. Welton makes two claims regarding the cross appeal: (1) that Ms. Martin “agrees” with him that the trial court’s decision should be reversed and remanded; and (2) that this Court has no power to determine whether the trial court successfully made a just and equitable distribution. Neither of these claims is true.

First, Ms. Martin’s brief responds to and contradicts each of Mr. Welton’s arguments on appeal. Ms. Martin does not “agree” that the decision should be reversed and remanded based on Mr. Welton’s arguments. The Court should reject his arguments.

Second, Mr. Welton cites a number of cases, none of which hold that this Court is powerless to reverse and remand where it is firmly convinced that a property division, or a failure to award maintenance, is not just and equitable. The statute requires a just and equitable distribution. RCW 26.09.080. This Court has the power to review any distribution to determine whether it is just and equitable. See, e.g., *In re Marriage of Washburn*, 101 Wn.2d 168, 179, 677 P.2d 152 (1984) (“In making an equitable property division or awarding maintenance, the trial court exercises broad

discretionary powers. Its disposition will not be overturned on appeal absent a showing of manifest abuse of discretion”); *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (discretion is abused when it is manifestly unreasonable or based on untenable grounds or reasons). Ms. Martin acknowledged the abuse of discretion standard in her opening brief, but respectfully submits that an abuse of discretion occurs when the overall distribution is not just and equitable. *Cf., e.g., In re Marriage of Muhammad*, 153 Wn.2d 795, 108 P.3d 779 (2005).

Simply put, it is untenable to award Mr. Welton assets worth millions of dollars, while awarding Ms. Martin \$180,000, and \$0 in maintenance. This is not just and equitable, notwithstanding Mr. Welton's and his parents' refusal to turn over the records of their business. The trial court abused its discretion by awarding Ms. Martin too little.

Mr. Welton also argues that Ms. Martin has asked *this Court* to make a distribution. No such request appears in Ms. Martin's brief. Her request is to reverse and remand with instructions that the current award is not just and equitable and must be increased. While Ms. Martin did generally refer to her request for \$300,000 in

the trial court, she nowhere asked this Court to enter a decree or to itself divide the property.

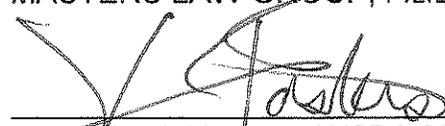
Finally, Mr. Welton's response to the cross appeal raises for the first time an argument that the Charging Order against the LLC was improper. This argument cannot be first raised in a reply brief, and the Charging Order is the law of the case. ***Cowiche Canyon Conservancy v. Bosley***, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). The trial court is free to increase the amount, should this Court believe its award to Ms. Martin is not just and equitable.

CONCLUSION

For the reasons stated in the opening brief and here, this Court should affirm as to Mr. Welton's appeal, but reverse as to Ms. Martin's cross appeal, and remand for a just and equitable distribution of property or a maintenance award.

RESPECTFULLY SUBMITTED this 2nd day of July, 2013.

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CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **REPLY RE CROSS APPEAL** postage prepaid, via U.S. mail on the 2nd day of July 2013, to the following counsel of record at the following addresses:

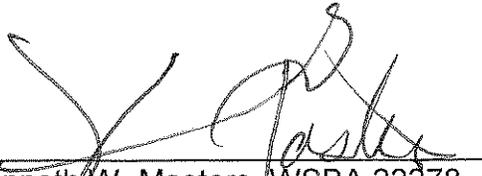
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