

NO. 31320-4-III

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

Brian Dale Hamond,

Appellant,

v.

Patricia Abrams-Hamond,

Respondent.

RESPONDENT'S BRIEF

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I. INTRODUCTION

In a marriage dissolution otherwise concluded by a CR 2A Settlement Agreement, the parties, Appellant Brian Dale Hamond (“Hamond”) and Respondent Patricia Abrams-Hamond (“Abrams”), stipulated to have the Superior Court decide three discreet issues without the need for a trial or live testimony: 1) the division of financial responsibility for utility bills incurred at the (former) family home; 2) the division of financial responsibility for a visa credit card bill; and 3) division of the parties’ five (5) retirement / pension plans.

Hamond assigns error only to the third issue; namely, the trial court’s division of the retirement / pension plans. Specifically, Hamond contends: 1) the trial court erred in not applying the ‘time rule’; and, 2) the trial court erred in not subtracting an alleged present value of Abrams’ expected future Social Security benefits from Abrams’ share of the present value of the parties’ community property retirement / pension plans.

These assignments of error are premised upon several factual and legal errors, each of which independently warrants affirming the trial court’s property division.

As to the first assignment of error, Hamond neither requested that the trial court apply the ‘time rule,’ nor does he demonstrate that an application of said rule would have resulted in a different property

division. This new contention of law (which itself appears to contradict the relief requested by Hamond at the trial court) was neither raised at trial nor in Hamond's reconsideration motion, and therefore should not be considered here. RAP 2.5(a). Moreover, the cases relied upon by Hamond, *In re Rockwell*, 141 Wn. App. 235, 170 P.3d 572 (2007), *In re Bulicek*, 59 Wn. App. 630, 800 P.2d 394 (1990), and *In re Chavez*, 80 Wn. App. 432, 909 P.2d 314 (1996), support the trial court's equal division of community retirement / pension plans, given the facts available to the trial court.

As to the second assignment of error, the record does not contain admissible evidence which supports Hamond's contentions concerning the present or projected value of Abrams' future Social Security benefits. Lacking such evidence, the Court cannot reach the legal question Hamond presents. Failure of proof aside, the specific relief requested by Hamond is expressly disallowed under both Washington and federal law. Hamond requests that the Court ascertain the precise value of Abrams' future projected Social Security benefits, and then subtract that amount from the community property awarded to her in the dissolution. A trial court may not calculate a specific formal valuation of one party's expected future Social Security benefits and then award the other party a precise property offset based upon that valuation. *Marriage of Zahm*, 138 Wn.2d 213, 978 P.2d 498 (1999). The remedy requested by Hamond at both the trial court

and here is specifically disallowed by law; whatever other options or remedies concerning Social Security Hamond may have had were neither argued to the trial court, nor have they been presented to this Court.

Consequently, Abrams respectfully requests that the Court affirm the trial court's division of the community retirement / pension plans.

II. STATEMENT OF THE CASE

A. The Marriage, the Dissolution, and the Trial by Stipulation.

Hamond and Abrams married on July 20, 1985. (CP 138). After nearly 26 years, they separated on March 17, 2011. (CP 138). A CR 2A Settlement Agreement resolving most property distribution issues was entered on August 16, 2012. (CP 8-10). The Settlement Agreement provided that three issues remained unresolved: division of the parties' retirement plans; payment of a credit card debt; and payment of certain utilities bills. (CP 9). The Settlement Agreement states that "if the issues in dispute cannot be resolved, then those [issues] shall be presented to the court in declaration form... for [the court] to resolve without oral argument or oral testimony." (CP 9).

On August 24, 2012, Abrams filed a declaration concerning the aforementioned three issues. (CP 11-110).¹ As to the parties' pension /

¹ A large portion of this section of the record concerns matters not at issue on appeal. CP 18-19 concern the utility bill issue; CP 20-85 concern the visa credit card issue.

retirement plans, Abrams identified the following to be divided (CP 13-14):

- Hamond's deferred compensation plan (CP 86);
- Hamond's LOEFF-2 plan (CP 88-95);
- Abrams' TRS 3 plan (CP 100-102);
- Abrams' defined benefit plan (CP 97-98);
- Abrams' Cowles Company retirement plan (CP 104-109).

Abrams requested that the trial court award Hamond 100% of his deferred compensation plan, and award Abrams 100% of her defined benefit plan. (CP 14). Abrams requested that the remaining three plans (LOEFF-2, TRS 3, and Cowles) be divided equally. (CP 14).

On August 27, 2012, Hamond submitted a declaration concerning the aforementioned three issues. (CP 111-131).² As to the pension / retirement plan issue, Hamond requested that the trial court "follow Brian Gosline's analysis of the plan which sets out what portion of the plan would constitute or equate to Social Security benefits." (CP 116). Hamond further stated that the "calculation of Social Security benefits as a portion of my LEOFF plan has not yet been completed." (CP 116). "I am asking the court to simply follow [Brian Gosline's] analysis once completed and

² Hamond's filing consists of a declaration (CP 111-118); a copy of a published Washington appellate case (CP 119-127); a June 12, 2012 letter from Brian G. Gosline (CP 128-130); and the first page of a July 30, 2012 letter from Brian G. Gosline (CP 131).

have the portion which does not equate to Social Security, divided equally along with all the other retirement accounts.” (CP 117). Hamond further asserts that “the total present value of anticipated Social Security benefits for [Abrams] [is] \$135,160.64.” (CP 116).

As referenced in Hamond’s declaration, two letters from Brian Gosline appear, in part, in the record. The June 12, 2012 letter provides calculations for the present value of Hamond’s LEOFF-2 plan, as well as for Abrams’ TRS-3 plan. (CP 129-30). However, the June 12, 2012 letter discusses neither Abrams’ nor Hamond’s Social Security or its equivalent. (*Id.*). The July 30, 2012 letter appears to concern Abrams’ Cowles Company retirement plan, though only the first page of the letter appears in the record, and that page does not contain Mr. Gosline’s financial calculations. (CP 131).

Other than the declarations of the parties, the record does not appear to contain evidence as to whether either party will receive Social Security benefits, nor as to what the values of those benefits are or would be. (CP, *passim*).

On October 1, 2012, the trial court ruled, in pertinent part, as follows:

The parties have various retirement plans and accounts, including a deferred compensation plan, a LOEFF plan, a TERS III plan, a defined benefit

plan and a Spokesman Review retirement plan before the Court for division in this dissolution. Here the Court would direct that the Respondent wife be awarded in total her defined benefit plan and that Petitioner husband be awarded in total his deferred compensation account. The balance of the retirement accounts (LOEFF plan, TERS III plan, Spokesman Review retirement plan) are entirely community and shall be divided equally between Petitioner and Respondent. Any costs for preparation and/or drafting of Qualified Domestic Relations Orders necessary to complete this transfer shall be paid for equally by Petitioner and Respondent.

(CP 135).

Findings of Fact, Conclusions of Law, and a Decree of Dissolution were entered on October 25, 2012. (CP 137-148).

B. Hamond Moves for Reconsideration.

On October 31, 2012, Hamond moved for reconsideration. (CP 149-154). The record contains no documents in support of the reconsideration motion, other than the declaration of Hamond. (CP 150-154).

Hamond's reconsideration motion was limited to the trial court's decision as to the division of the pension / retirement plans. (CP 150-154). In describing the relief Hamond requested from the trial court in his August 27, 2012 declaration, he stated: "[m]y request was [to] use the calculations of Brian Gosline to determine what portion of the LOEFF

account should be divided equally *after* [Abrams'] projected Social Security benefits are subtracted.” (CP 150) (italics in original). He continued: “I am requesting that the portion of my retirement account which equates to [Abrams'] projected Social Security benefits...be subtracted from the LOEFF retirement[.]” (CP 151). “I am asking that the court reconsider whether or not [Abrams'] Social Security benefits should be subtracted from the portion of my LOEFF plan to be considered community property.” (CP 153).

Hamond also states that the “...projected Social Security benefits for [Abrams] were calculated by Brian Gosline to be \$135,160.34. My Social Security benefits were not calculated[.]” (CP 151). No evidence appears in the record to support this asserted number. (CP, *passim*).

Hamond further states:

I am requesting that instead, the present values of the TRS Plan 3 and Spokesman Review plan be subtracted from my LOEFF plan and the remainder of the LOEFF plan be divided with [Abrams] keeping both her TRS Plan 3 and Spokesman Review plan.

(CP 152).

Abrams responded with a legal memorandum. (CP 155-159). Citing *Hisquierdo v. Hisquierdo*, 439 US 572, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979) and *In re Marriage of Zahm*, 138 Wn.2d 213, 978 P.2d 498 (1999),

Abrams argued that the trial court may not, as a matter of law, calculate precise projected future Social Security benefits of one party and then offset that amount with an increased community property award to the other party. (CP 158-59).

The trial court denied the motion for reconsideration. (CP 161). This appeal timely followed.

III. ARGUMENT

A. Standard of Review.

At the time of dissolution, all property is brought before the court for a just and equitable distribution. RCW 26.09.080. “Dissolution proceedings invoke the court’s equitable jurisdiction. Sitting in equity, a trial court enjoys broad discretion to grant relief to parties in a dissolution based on what it considers to be ‘just and equitable.’” *In re Marriage of Farmer*, 172 Wn.2d 616, 624, 259 P.3d 256 (2011) (internal citation omitted). The court’s equitable jurisdiction includes the ability to grant whatever relief the facts warrant. *Farmer*, 172 Wn.2d at 625 (citing *Ronken v. Bd. of County Comm’rs of Snohomish County*, 89 Wn.2d 304, 313, 572 P.2d 1 (1977) and *Kreger v. Hall*, 70 Wn.2d 1002, 1008, 425 P.2d 638 (1967)).

The trial court’s property division is not held to a standard of mathematical precision. *In re Marriage of Konzen*, 103 Wn.2d 470, 477-

78, 693 P.2d 97, cert. denied, 473 U.S. 906 (1985); *see also In re Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (recognizing that the trial court is not required to divide community property equally).

“In a long term marriage of 25 years or more, the trial court's objective is to place the parties in roughly equal financial positions for the rest of their lives.” *In re Rockwell*, 141 Wn. App. 235, 243, 170 P.3d 572 (2007).

A property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion. *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

B. The Trial Court did not Err in Dividing the Parties' Five Pension / Retirement Plans Equally.

1. *Hamond's 'time rule' argument is raised for the first time on appeal, and should not be considered.*

Hamond argues the trial court erred in not employing the 'time rule' when dividing Hamond's LEOFF-2 retirement plan. (Appellant's Brief, pp. 16-17). Hamond makes no mention of the other four (4) pension / retirement plans divided by the trial court. (*Id.*).

At the trial court, Hamond did not request that the 'time rule' be employed for any of the pension / retirement plans. (CP 111-118; CP 149-154). Instead, Hamond had his own proposals for division, which shifted somewhat between his initial declaration and his declaration concerning reconsideration, though none of his proposals concerned or mentioned the 'time rule.' (*Id.*).

"The appellate court may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a); *see also Estate of Bunch v. McGraw Ctr.*, 174 Wn.2d 425, 431 n.1, 275 P.3d 1119 (2012).

Here, Hamond did not raise the 'time rule' argument until the instant appeal, despite having ample opportunity at the trial court. His argument as to the 'time rule' should therefore be disregarded.

2. *The trial court's equal division of the parties' five pension / retirement plans was not in error.*

Assuming the Court reaches the merits of Hamond's 'time rule' argument, there is still no basis to assign error to the trial court's division of the pension / retirement plans.

First, the 'time rule' Hamond relies upon is more typically used to determine the community share of a retirement account where the retirement account accrued partially prior to the marriage, and partially after the marriage. *See In re Rockwell*, 141 Wn. App. 235, 251-52, 170 P.3d 572 (2007). Where pension does not exist prior to the marriage and begins to accrue during the marriage, increases in the value of the pension which occur after the parties separate is counted as part of the community share. *Rockwell*, 141 Wn. App. at 252-53 (citing *In re Bulicek*, 59 Wn. App. 630, 800 P.2d 294 (1990);); *In re Marriage of Chavez*, 80 Wn. App. 432, 909 P.2d 314 (1996) ("increases in pension benefits based on a retiree's higher salary at the time of retirement should be included in the community share.")).

An award of pension rights on a percentage, as-received basis is to be encouraged. Such a disposition avoids difficult valuation problems, shares the risks inherent in deferred receipt of the income, and provides a source of income to both spouses at a time when there will likely be greater need for it. We acknowledge that George's retirement fund may receive proportionately higher

future contributions based upon his career longevity and anticipated increases in annual pay. We further acknowledge that the formula utilized for division of future retirement benefits could result in Janet's sharing in those increases. However, far from condemning this apportionment method, we specifically approve it as a means of recognizing the community contribution to such increases.

Bulicek, 59 Wn. App. at 638-39.

In addition to *Rockewell*, *Chavez*, and *Bulicek*, Hamond cites three other cases: *In re Marriage of Harris*, 107 Wn. App. 597, 27 P.3d 656 (2001); *In re Marriage of Greene*, 97 Wn. App. 708, 986 P.2d 144 (1999); and *In re Marriage of Pea*, 17 Wn. App. 728, 566 P.2d 212 (1977).

Harris concerned military retirement benefits. *Harris*, 107 Wn. App. at 599. In *Harris*, one party's military service, and, by extension, contribution to military pension benefits, predated the marriage, which required the trial court to calculate which portion of the pension predated the marriage and was therefore separate property, and which portion was accrued during the marriage and was therefore community property. *Id.* at 600-02. Here, Hamond's LEOFF-2 pension did not begin accruing until 1990 – five (5) years after the commencement of the marriage. (CP 128). The *Harris* court's discussion of the 'time rule' is therefore inapt. Further, in *Harris*, the appellant asked that the court apply a "per se" rule in all cases concerning pension division. The *Harris* court rejected this, stating

that “[t]here can be no set rule for determining every case and as in all other cases of property distribution, the trial court must exercise a wise and sound discretion.” *Harris* at 603 (quoting *Wilder v. Wilder*, 85 Wn.2d 364, 369, 534 P.2d 1355 (1975)).

In a significant parallel, the *Harris* court noted that the appellant had failed to present competent evidence to support his contentions of inequitable distribution. *Harris* at 604. As discussed *infra*, the record here likewise does not contain competent evidence to support Hamond’s assertions of inequality; rather, on the subject matter relevant to Hamond’s assignments of error, the only evidence is Hamond’s own declaration, with no supporting documentation, calculations, or actuarial data concerning Social Security. As in *Harris*, this Court should affirm the trial court’s property division.

Marriage of Greene primarily concerned a trial court’s failure to value a parcel of real property; an issue not pertinent here. *Greene*, 97 Wn. App. at 711-12. The remainder of *Greene* concerned a military pension, as in *Harris*. The military spouse in *Greene* both joined the military and began accruing military retirement benefits prior to the marriage. *Greene* at 710. As in *Harris*, the *Greene* court explained that the ‘time rule’ should be employed to segregate the portion of the military retirement benefit earned prior to the marriage, which was separate property, and the

portion earned during the marriage, which was community. *Greene* at 713. Further, the *Greene* court explained that where there is either insufficient evidence of the present value of a pension, or where there is conflicting testimony as to the value of a pension, the trial court may employ a percentage formula to divide a pension. *Id.* at 712-13. Here, the trial court did not need to separate a community property portion of the LOEFF-2 plan from a separate property portion, because the LOEFF-2 plan was entirely earned during the marriage. Consequently, the trial court did not err in employing a percentage formula (50% to each party) to divide the community property LOEFF-2 plan.

Marriage of Pea also concerned military pensions, and also concerned, indirectly, separating the separate property portion of a pension earned pre-marriage from the community property portion earned during the marriage. *Pea*, 17 Wn. App. at 729-31. The *Pea* court found, *inter alia*, that the trial court's failure to award the wife any of the military pension required remand. *Pea* at 731. The factual and legal circumstances in *Pea* are vastly different from the present case, and so reference to *Pea* is of limited utility.

Here, the parties married in 1985. (CP 138). Hamond's LEOFF-2 pension did not begin accruing until 1990 – five (5) years after the commencement of the marriage. (CP 128). There is therefore no basis to

use the 'time rule' to determine the community share up to the point of separation, as the LEOFF-2 pension did not pre-date the marriage.

Hamond offers neither evidence nor analysis as to how the trial court erred in dividing the pension plans equally vis-à-vis the 'time rule,' nor does Hamond demonstrate what the outcome "should" have been had the 'time rule' been otherwise employed by the trial court. Moreover, as Hamond did not request that the trial court employ the 'time rule' method, and instead offered his own proposed simple fractional division, he may not now assign error to a legal issue never presented or argued to the trial court.

C. **The Trial Court did not Err in Declining to Offset Abrams' Projected Future Social Security Benefits with an Increased Award to Hamond.**

1. *The record lacks competent evidence to value either party's projected Social Security benefits or their equivalent.*

Generally speaking, the burden of production falls upon the proponent of any particular fact or contention. "This burden is to produc[e] evidence, satisfactory to the judge, of a particular fact in issue. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or directed verdict) if evidence on the issue has not been produced." *Federal Signal v. Safety Factors*, 125 Wn.2d 413, 433, 886 P.2d 172 (1994) (internal citation omitted).

Here, the record is devoid of evidence of calculations of either a) the value of Abrams' future Social Security benefit; or b) the value of the equivalent of Hamond's future Social Security benefit. The closest is an assertion by Hamond in a declaration of a projected value of Abrams' social security benefit. (CP 116; CP 151). Hamond, however, did not appear to have placed any supporting calculations or evidence in the record to support the Social Security benefit figure(s) claimed in his declarations, and Hamond disclosed no education or training which would qualify him as an expert to testify to such calculations. *See* ER 701; ER 702.

Consequently, the Court should not reach Hamond's legal argument as to measurement and offset of projected future Social Security benefits, as the record contains no competent evidence of what those values are or should be – a failure to meet the burden of production. *See Federal Signal*, 125 Wn.2d at 433.³

³ Notwithstanding the political question of what, precisely, the Social Security system will look like in 15 years, when the parties in this matter are or would be eligible for benefits under the system as it currently stands. Generally speaking, the courts may not award speculative relief. Arguably, the assumption that a federal program subject to political whim will remain substantially unchanged several decades hence may itself constitute a form of speculative relief, though this judicial policy discussion is likely beyond the scope of the instant appeal, especially considering the dearth of evidence concerning present values of projected Social Security benefits presented to the trial court.

2. *Hamond's request that the Court offset the community property division with Abrams' projected future Social Security benefits is disallowed under Hisquierdo and Zahm.*

As stated *supra*, Hamond's argument to the trial court, and to this Court, is that "[Abrams'] Social Security benefits should be subtracted from the portion of my LOEFF plan to be considered community property." (CP 153). Assuming, *arguendo*, that the record does contain competent evidence of precise values using which the trial court could have performed Hamond's requested calculation, Hamond's request itself is prohibited by *Hisquierdo* and *Zahm*.

"[T]he trial court cannot calculate a future value of [Social Security] and award that value as a precise property offset as part of its property distribution." *Rockwell*, 141 Wn. App. at 244 (*citing Zahm*, 138 Wn.2d at 217).

Hamond cites *Marriage of Martin*, 22 Wn. App. 295, 588 P.2d 1235 (1979). *Martin* did not concern pensions. *Id.* at 296. Instead, *Martin* concerned a trial court which did not characterize property as separate or community. *Id.* Here, the only property before the trial court was the parties' five (5) retirement plans, each of which the trial court characterized and divided. Further, unlike *Martin*, here the trial court was provided with values the pensions before it – the only evidentiary failure in the instant case is Hamond's failure to present competent evidence

supporting his assertions of present value of future expected Social Security benefits. *Martin* is inapt.

Hamond cites *In re Marriage of Smith*, 158 Wn. App. 248, 261, 241 P.3d 449 (2010). In *Smith*, the husband argued that “because he was not eligible for Social Security benefits, which are the recipient’s separate property, the trial court should have calculated and removed the portion of his retirement received in lieu of Social Security before calculating [wife’s] share.” *Id.* at 260. The *Smith* court noted that “[c]haracterizing pension received in lieu of Social Security as separate property is not mandatory in Washington, particularly where the parties never suggested that characterization.” *Id.* at 260-61. “The trial court did not err in considering the total amount of [husband’s] retirement benefits in calculating [wife’s] share.” *Id.* Here, too, Hamond never asked the trial court to characterize part of Hamond’s retirement as separate property. Instead, he asked the trial court to calculate Abrams’ precise future Social Security benefit, and then subtract that from Abrams’ share of the division of community property – a request which the *Smith* court noted is not permitted under Washington law. *Id.* at 260 (citing *Zahm*, 138 Wn.2d at 219; and *Rockwell*, 141 Wn. App. at 244-45).

Hamond also cites three out-of-jurisdiction authorities: *Cornbleth v. Cornbleth*, 397 Pa. Super. 421, 580 A.2d 369 (1990); *Kohler v. Kohler*,

211 Ariz. 106, 118 P.3d 621 (App. 2005); and *Silcox v. Silcox*, 6 S.W.3d 899 (Mo.banc 1999).⁴

Cornbleth, like *Rockwell*, *supra*, concerned the calculation of Social Security benefits a party would have received had that party been participating in Social Security, and then subtracting that amount from that same party's pension. Here, Hamond does not request this – instead he requests that Abrams' projected future Social Security be subtracted from Abrams' portion of the community property division – forbidden under *Zahm*. *Kohler* concerns the same issues as *Rockwell* and *Cornbleth*, and is likewise inapplicable because it does not concern the relief Hamond has actually requested – an impermissible deduction from Abrams' share of community property on the basis of (Hamond's assertions of) the value of Abrams' future Social Security benefit.

Silcox turns on the interpretation of the specific language of certain Missouri statutes, and thus appears to be of limited value.

Here, Hamond requests that the Court subtract the precise calculation of Abrams' projected Social Security benefits from Abrams' share of the community property divided by the trial court. As *Zahm* expressly prohibits this relief, the trial court did not err in declining to do so.

⁴ It should be noted that neither Pennsylvania nor Missouri are community property states.

3. *Other remedies for Hamond were neither requested at the trial court nor here, and should not be considered.*

Hamond emphasizes that “the possibility that one or both parties may receive Social Security benefits is a factor the court may consider in making its distribution of property.” *Rockwell*, 141 Wn. App. at 244-45. However, the fact that the law permits this consideration does not entitle Hamond to the one relief he did request, a precise property offset subtracting Abrams’ projected Social Security benefit from Abrams’ share of the community property. Instead, cases such as *Rockwell* provide different avenues of relief for parties similarly situated to Hamond, though Hamond has failed to request any of the relief actually permitted to him.

For example, in *Rockwell*, the wife received a federal pension in lieu of Social Security. *Rockwell* at 245. The *Rockwell* court permitted the wife to calculate what Social Security benefits she would have otherwise earned, and then subtract that amount from her own federal pension, and treat that ‘but for’ amount as if it were Social Security / separate property. *Id.* Hamond did not request the trial court a) calculate what Social Security he would have otherwise received; or b) subtract that amount from his own pension. *See also Smith*, 158 Wn. App. at 261 (“Characterizing pension received in lieu of Social Security as separate property is not

mandatory in Washington, particularly where the parties never suggested that characterization.”).

Rather, Hamond asked the trial court to a) calculate Abrams’ projected future Social Security; and then b) subtract that amount from Abrams’ share of the community property – an action prohibited by *Zahm*.

D. Costs and Attorney’s Fees.

RCW 26.09.140 provides, in pertinent part: “Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys’ fees in addition to statutory costs.”

RCW 26.09.140 gives discretion to award attorney fees to either party based on the parties’ financial resources, balancing the financial need of the requesting party against the other party’s ability to pay. *In re Marriage of Pennamen*, 135 Wn. App. 790, 807-08, 146 P.3d 466 (2006).

Subject to this case law, Abrams requests that the Court award her the costs and attorney’s fees expended in responding to this appeal.

IV. CONCLUSION

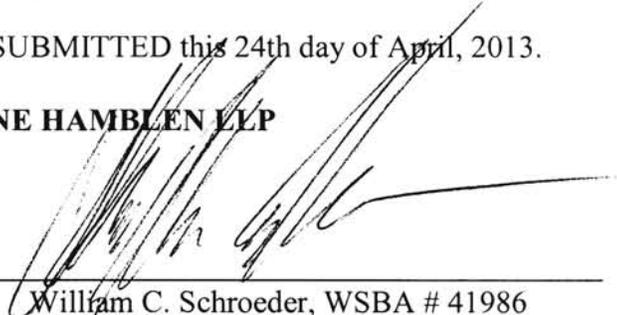
The record does not contain sufficient evidence for the Court to entertain Hamond’s substantive claims, but, even were the Court to reach the legal merits of Hamond’s argument, the trial court should still be affirmed, as Hamond’s ‘time rule’ case law does not mandate a different

property distribution on this record, and as Hamond's specific request for relief concerning a precise offset from Abrams' share of the community property based upon Abrams' alleged future Social Security benefits is prohibited under *Zahm*.

Respondent Abrams therefore respectfully requests that the Court affirm the trial court's property division.

RESPECTFULLY SUBMITTED this 24th day of April, 2013.

PAINE HAMBLÉN LLP

By: 

William C. Schroeder, WSBA # 41986
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2013, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S BRIEF**, by the method indicated below and addressed to the following:

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