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Court of Appeals
Division III
State of Washington

Court of Appeals No. 32041-3-III
Benton County Superior Court Cause No. 10-3-01133-2

WASHINGTON STATE COURT OF APPEALS
DIVISION III

SURESH PHILIP,

Petitioner/Appellant,

vs.

JAYA PAULOUSE PHILIP,

Respondent.

APPELLATE BRIEF OF PETITIONER/APPELLANT

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STATUTES INVOLVED:

RCW 26.09.080

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;

- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

RCW 26.16.030

Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both, is community property. Either spouse or either domestic partner, acting alone, may manage and control community property, with a like power of disposition as the acting spouse or domestic partner has over his or her separate property, except:

- (1) Neither person shall devise or bequeath by will more than one-half of the community property.
- (2) Neither person shall give community property without the express or implied consent of the other.
- (3) Neither person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.
- (4) Neither person shall purchase or contract to purchase community real property without the other spouse or other domestic partner joining in the transaction of purchase or in the execution of the contract to purchase.
- (5) Neither person shall create a security interest other than a purchase money security interest as defined in *RCW 62A.9-107 in, or sell, community household goods, furnishings, or appliances, or a community mobile home unless the other spouse or other domestic partner joins in executing the security agreement or bill of sale, if any.

(6) Neither person shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses or both domestic partners participate in its management without the consent of the other: PROVIDED, That where only one spouse or one domestic partner participates in such management the participating spouse or participating domestic partner may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse or nonparticipating domestic partner.

I. INTRODUCTION

In 1988, Appellant, Dr. Suresh Philip, ("Dr. Philip") borrowed \$92,000.00 from his parents to finance his medical education. After earning his medical degree in Nigeria, Dr. Philip executed an "IOU Undertaking/Promissory Note" to repay the loan at a four percent interest rate, which was compounded annually. The promissory note was executed approximately two years prior to his marriage to Respondent, Jaya Philip.

In 1991, Dr. Philip borrowed an additional \$28,000.00 from his parents to finance his transition to the United States to live with Ms. Philip. Dr. Philip was required to sit for three (3) separate medical exams before he could apply for medical school in the United States because his medical degree from Nigeria would not translate to the United States. Dr. Philip had exhausted his savings moving out of Nigeria and could not afford the cost of living and the cost of the medical exams. Dr. Philip executed a second promissory note to his parents to repay the loan.

In September 2010, Dr. Philip used community funds to repay his parents for both loans. The total amount repaid was \$251,000.00. This amount reflected the principal balance along with the accumulated interest.

Dr. Philip's repayment of the loans became a central issue at trial. The trial court held that Ms. Philips alone was entitled to reimbursement for the entire amount of the community funds expended to satisfy the loan. Dr. Philip objected, stating that half of the community funds used to satisfy the separate debt belonged to him. The trial court disagreed. It is this decision that the Appellant requests be overturned on appeal.

Appellant seeks reversal of the trial court's ruling on two grounds. First, the trial court erred in holding that the Philips' community was entitled to reimbursement for the community funds used to repay the loans from Dr. Philip's parents. Dr. Philip had statutory authority to manage and control all of the community funds, and absent evidence that Dr. Philip did not act within his authority, the right of reimbursement awarded constituted an abuse of discretion. Ms. Philip also received a reciprocal benefit from Dr. Philip's medical degree.

Second, the trial court erred in holding Ms. Philip alone was entitled to the entire \$251,000.00 reimbursement. Any right of reimbursement belonged to the community estate, including Dr. Philip. It should have been divided equally between the parties and Dr. Philip was entitled to \$125,500.00 of the reimbursement. Failure to properly calculate and divide the reimbursement constituted an abuse of discretion.

II. ASSIGNMENTS OF ERROR

- A. THE TRIAL COURT ERRED IN GRANTING THE COMMUNITY A RIGHT OF REIMBURSEMENT.
- B. THE TRIAL COURT ERRED IN AWARDING THE FULL COMMUNITY RIGHT OF REIMBURSEMENT TO MS. PHILIP ALONE.

III. STATEMENT OF THE CASE

In 1987, Appellant, Dr. Suresh Philip (Dr. Philip), graduated from medical school in Nigeria. RP *dated May 22, 2013*, 71:5-6.¹ Nigeria did not offer student financial aid or educational loans. RP *dated May 23, 2013*, 45:21-25. A medical student was required to pay the full amount of tuition. *See Id.* Dr. Philip's parents loaned him \$92,000.00 to finance his medical education. RP *dated May 23, 2013*, 45:23-46:11; 66:11-12.

In 1988, Dr. Philip executed a promissory note/IOU for \$92,000.00 with four (4) percent interest, compounded annually, to repay the educational loan from his parents. *See RP dated May 23, 2013*, 47:6-9. The promissory note merely memorialized the verbal agreement he had

¹ "RP" refers to Verbatim Report of Proceeding. The trial in this matter consisted of two days of witness testimony, beginning on May 22, 2013, and ending on May 23, 2013. The trial court's ruling was handed down on May 24, 2013. On May 22, 2013, the proceedings were recorded by court reporter, Lisa Lang. The remainder of the trial was digitally recorded and transcribed. This has resulted in two separate numbering systems for the Verbatim Report of Proceedings. Each separate portion referred to will be identified with the corresponding date which it was originally

made with his parents when he accepted the loan. RP dated May 23, 2013, 46:13-16.

On July 1, 1990, Dr. Philip married Respondent, Jaya Philip (Ms. Philip), in Mavelikara, India. CP 4:5-6; RP dated May 22, 2013, 70:2-3.² It was essentially an arranged marriage. RP dated May 22, 2013, 70:11-17. Dr. Philip and Ms. Philip had only known each other about three (3) weeks prior to the ceremony. RP dated May 22, 2013, 70:18-21.

At the time the parties married, Dr. Philip worked as a surgeon in Nigeria. See RP dated May 22, 2013, 71: 1-3. Ms. Philip was employed by Traveler's Insurance Company in Hartford, Connecticut. RP dated May 22, 2013, 13: 1-15; *Id.* at 72:4-9. In 1991, the parties arranged for Dr. Philip to move to the United States, obtain citizenship, and transition his medical degree. See RP dated May 22, 2013, 71: 1-3. However, the transition process required Dr. Philip to live in Canada for a year and to sit for three (3) medical examinations. RP dated May 22, 2013, 74: 21-75:13. His medical degree could not transition to the United States without taking the exams. RP dated May 22, 2013, 74:22-75:2.

Dr. Philip exhausted his savings by moving to Canada, and was receiving financial support from Ms. Philip. RP dated May 22, 2013,

² "CP" refers to Clerk's Papers.

74:2-10. However, this was not enough to cover Dr. Philip's cost of living, as well as the Kaplan re-fresher course he was taking to prepare for his examinations. RP dated May 22, 2013, 74: 11-23, 75:3-8. Dr. Philip's parents loaned him \$28,000.00 to help cover the costs. RP dated May 22, 2013, 74: 13-20; RP dated May 23, 2013, 66:12-20. On September 20, 1991, Dr. Philip executed a second promissory note/IOU to his parents. RP dated May 23, 2013, 47:10-12.

During the marriage, Dr. Philip worked as a Gastroenterologist. See RP dated May 22, 2013, 64:2-5. Ms. Philip spent the majority of the marriage as a stay-at-home mother. See RP dated May 22, 2013, 17:16-19. Dr. Philip spent the later years of his career splitting time between his solo practice and a contract with the Veteran's Administration. Dr. Philip's business income for 2005-2010 was \$219,567.00, \$497,171.00, \$425,034.00, \$406,821.00, \$256,437.00, and \$110,957.00, respectively. RP dated May 22, 2013, 50:21-52:3. His salaries and wages for 2007-2009 were \$100,800.00, \$147,000.00, and \$263,546.00, respectively. *Id.* at 51:20-52:3.

Dr. Philip repaid both of the promissory notes, with interest, in September 2010, while his parents were in town visiting from India. RP dated May 23, 2013, 50:3-9. Dr. Philip made two separate transactions to

repay the notes. RP *dated May 23, 2013*, 49:18-22. First he transferred \$251,000.00 from a joint Vanguard account to a joint Bank of America Account. RP *dated May 23, 2013*, 49:22-25. Second, he wrote a check to his parents for \$251,000.00 out of the joint Bank of America account. *Id.* The entire transaction required two separate steps because Dr. Philip could not write a check from the community Vanguard account, where he and Ms. Philip's kept the majority of their liquid assets. RP *dated May 23, 2013*, 49:6-9, 22-25. Dr. Philip's parents did not require Dr. Philip to make payments on either note before 2010 because he told them that had intended to use the money to build his own surgery center. RP *dated May 23, 2013*, 73:3-9, 13-16. Once he realized he was no longer going to be able to build a surgery center, he used his liquid assets to re-pay the notes. *Id.* at 73:11-19.

On November 12, 2010, the parties separated. CP 4:7-8. A final parenting plan, related to the parties' two minor children, was entered on March 1, 2011. CP, 6:13-14. A trial on the remaining issues was heard by the Honorable Judge Robert Swisher on May 22nd and 23rd, 2013.

At trial, there was substantial testimony related to Dr. Philip's repayment of both notes. However, there was no dispute that both notes were Dr. Philip's separate debt and community funds were used to repay

the debt. A dispute arose out of the Court's findings with respect to the repayment of his separate debt.

Judge Swisher set forth the division of assets and debts on May 24, 2013. Ms. Philip was awarded the parties' marital residence with a net value of \$351,000.00. *RP dated May 23-24, 2013*, 213:2-3. She was awarded all her of her personal belongings and household goods valued at \$40,000.00. *Id.* at 6-7. She was awarded \$731,000.00 from various joint bank accounts, IRAs, and investment accounts. *RP dated May 23-24, 2013*, 213:1-214:1. Ms. Philip was also awarded \$1,500.00 per month through January 1, 2014, on top of almost \$210,000.00 she had received in maintenance over the previous two years. *See RP dated May 22, 2013*, 38:21-39:11. In all, she received over \$1.4 million dollars in spousal maintenance and assets.

Judge Swisher made findings as to Dr. Philip's repayment of the notes:

Okay, I have to deal with the two hundred and fifty one thousand dollar debt, or dollars that were paid to Mr. Philip's parents. That debt and I looked at the promissory note, uh, that was a separate property debt he brought into the marriage...The two hundred and fifty one thousand dollars is a separate debt for Mr. Philips...

* * *

[W]hat I am going to do is award the Vanguard Account to her then she gets no judgment against him and she is compensated for the two-hundred and fifty thousand that was paid of community assets that was paid to his parents.

RP dated May 24, 2013, 214:1-5, 11-15; RP dated May 24, 2013, 215:14-

18. There was an objection raised by Appellants counsel:

Mr. Telquist: Your honor, did you, isn't one-half of the community, the two- hundred fifty one thousand, I did argue that one half, it is Doctor Suresh's by community property law. So you're giving her the entire two-fifty?

The Court: It's all his separate debt.

Mr. Telquist: I understand but he used community funds of which he owns one half. I just want to make sure I'm clear.

The Court: Okay, yet he took community funds and paid his separate debt and uh, it wasn't, you know community funds he took and he took em all, they were applied to a separate property debt. She he doesn't get credit for half of it even. He just, and I can understand why he did it. I don't have a problem with him doing it. But uh, but it's a community debt...

* * *

Mr. Telquist: I just, my two forecast your honor, I don't think the analysis is correct, I think he can use his portion of the community to pay his separate debt, one half he is entitled to.

RP dated May 24, 2013, 215:14-216:11.

Findings of fact and conclusions of law were entered on October 24, 103. CP, 3. Dr. Philip filed a notice of appeal on October 31, 2013. CP, 14.

IV. ARGUMENT/ANALYSIS

The trial court erred by reimbursing Ms. Philip \$251,000.00 for several reasons. First, Dr. Philip had a statutory right to manage and control all of the parties community assets during the existence of the marital community. RCW 26.16.030. Absent a transaction that required Ms. Philips' consent or participation, evidence that Dr. Philip was not acting within the scope of his statutory authority, or evidence Dr. Philip breached of fiduciary duty, there was no basis for the trial court to award a right of reimbursement to the community estate. *See* RCW 16.16.030. Second, Ms. Philip was not entitled to a right of reimbursement because she received a reciprocal benefit from the loans given to Dr. Philip. Third, even if the community estate was entitled to a right of reimbursement, Dr. Philip was entitled to half of the reimbursement as a member of the marital community. This matter should be remanded to the trial court to appropriately calculate the amount of reimbursement, if any, Ms. Philip may be entitled to.

A. STANDARD OF REVIEW.

In a dissolution proceeding, a trial court has broad discretion to make a just and equitable division of assets and debts. *See* RCW 26.09.080; *Miracle v. Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984) (citing

Baker v. Baker, 80 Wn.2d 736, 498 P.2d 315 (1972)). A trial court's decision to award a right of reimbursement, based on the facts and circumstances, is reviewed only for abuse of discretion. *Miracle*, 101 Wn.2d at 139. Therefore, the trial court's decision to reimburse Ms. Philip is reviewed for abuse of discretion.

B. THE TRIAL COURT ERRED IN GRANTING THE COMMUNITY A RIGHT OF REIMBURSEMENT.

A right of reimbursement is based on equitable principles. *Miracle*, 101 Wn.2d at 139; *Lindemann v. Lindemann*, 92 Wash.App. 64, 74, 960 P.2d 966 (1998); *Harry Cross, The Community Property Law in Washington*, 49 Wash.L.Rev. 729, 776 (1974). It is intended to compensate and/or protect a spouse when community assets are used to improve a separate property asset or pay a separate judgment of the other spouse. See *deElche v. Jacobsen*, 95 Wn.2d 237, 622 P.2d 835 (1980) (Supreme Court held that non-tortfeasor spouse was entitled to a right of reimbursement for community assets used to satisfy judgment against spouse); See also *Lindemann*, 92 Wn.App. 64, 74, 960 P.2d 966 (1998) (Court of Appeals, Division I, held that spouse was entitled to right of reimbursement for community labor used to increase value to husbands separate property business); See e.g. *Merkel v. Merkel*, 39 Wn.2d 102, 113-16, 234 P.2d 857(1951) (Supreme Court held that spouse was entitled

to repayment of community funds used to satisfy separate alimony obligation). However, a right of reimbursement does not arise as a matter of right merely because community funds were used to satisfy a separate obligation. *See In re Marriage of Miracle*, 101 Wash.2d at 139. Reimbursement is intended to assure that a separate owner is not unjustly enriched at the expense of the community. *Lindemann*, 92 Wn.App. at 74.

Here, the trial court mistakenly held that the community was entitled to reimbursement for the community funds used to repay Dr. Philip's parents. Dr. Philip had an absolute and undisputed right to use community funds in order to repay his parents. RCW 26.16.030. Dr. Philip was not required to obtain Ms. Philip's participation or consent for the transaction. RCW 26.16.030(1)-(6). Dr. Philip did not act outside the scope of his statutory authority, or breach his fiduciary duty, which would otherwise entitle the community to reimbursement. And, any right of reimbursement the community may have been entitled to was offset by the reciprocal benefit the community received from the loans given by Dr. Philip's parents. Thus, the court abused its discretion.

1. Dr. Philip had Statutory Authority to Manage and Control the Community Funds During the Existence of the Marital Community.

RCW 26.16.030 grants each spouse equal power to manage and control community assets. The statute reads, in pertinent part:

Either spouse or either domestic partner, *acting alone*, may manage and control community property, with a like power of disposition as the acting spouse or domestic partner has over his or her separate property...

RCW 26.16.030 (italics added). The sole management authority granted to each spouse is broad, and there are only six transactions that expressly require the participation and/or consent of both spouses:

- (1) Neither spouse may devise or bequeath by will more than one-half of the community property;
- (2) Neither spouse may make a gift of substantial property;
- (3) Neither spouse may sell, convey, or encumber the community real property;
- (4) Neither spouse may purchase or contract to purchase community real property;
- (5) Neither spouse may create a security interest in or sell, community household goods, furnishings, appliances, or family mobile home;
- (6) Neither spouse may acquire, purchase, sell, convey, or encumber the assets or good will of a business where both spouses participate in the management of the business.

RCW 26.16.030(1)-(6); *Schweitzer v. Schweitzer*, 81 Wn.App. 589, 596-97, 915 P.2d 575 (1996). In the absence of an express limitation, each spouse is entitled to manage community property as they see fit so long as the spouse is acting in good faith and “in the best interest of the community.” *Schweitzer*, 81 Wn.App. at 597 (quoting *Hanley v. Most*, 9 Wash.2d 429, 461, 115 P.2d 933 (1941)). “After all, it is their property, and if they want to sell it, invest it, mortgage it, give it away, or even destroy it, this is their general right.” *19 Wash. Prac., Fam. And Community Prop. L. § 12.2.*

Dr. Philip had statutory authority to use any and all community funds during the existence of the Philips’ marital community. RCW 26.16.030. Dr. Philips’ authority and control is not altered or in any way limited because community funds were expended to satisfy a separate debt. *See* RCW 26.16.030(1)-(6). To find that a right of reimbursement was appropriate, there must be evidence to show Dr. Philip improperly engaged in a transaction that required Ms. Philips’ consent or participation, or that he was not acting in the best interest of the community. *Schweitzer*, 81 Wn.App. at 598. No such evidence was presented in this case.

Dr. Philip did not engage in any of the transactions listed in RCW 26.16.030(1)-(6). Dr. Philip did not devise or bequest more than one-half of the community property by will. RCW 26.16.030(1). Dr. Philip did not make a gift of substantial community property. RCW 26.16.030(2). Dr. Philip did not sell, convey, or encumber community real property. RCW 26.16.030(3). Dr. Philip did not purchase or contract to purchase community real property. RCW 26.16.030(4). Dr. Philip did not create a security interest in or sell community household goods, furnishings, appliances, or family mobile home. RCW 26.16.030(5). Dr. Philip did not acquire, sell convey or encumber the assets or good will of a business where both spouses participate in the management of the business. RCW 26.16.030(6). Therefore, a right of reimbursement cannot not be awarded on this basis.

Dr. Philip acted in the best interest of the community. *See Schweiter*, 81 Wn.App. at 598. The trial court specifically opined that Dr. Philip was acting on behalf of the community when he used community funds to repay his parents:

The Court: Okay, yet he took community funds and paid his separate debt and uh, it wasn't, you know community funds he took and he took em all, they were applied to a separate property debt. She he doesn't get credit for half of it even. *He just, and I can understand why he did it. I*

don't have a problem with him doing it. But uh, but it's a community debt...

RP *dated May 24, 2013*, 216:4-11 (italics added). The trial court clearly had no problem with Dr. Philip's repaying the loan. *Id.* The simple fact is Ms. Philip disagreed with the repayment. And, "where the facts show that husband and wife disagree on a matter involving the management of community property, the decision of the acting spouse controls." *Schweiter*, 81 Wn.App. at 598. Therefore, it is presumed that Dr. Philip acted within his authority to re-pay the loans and the court abused its discretion in determining that a right of reimbursement was appropriate.

2. Dr. Philip Did Not Breach His Fiduciary Duty to Ms. Philip By Re-paying the Loans from His Parents.

It is anticipated Ms. Philip will argue that Dr. Philip breached his fiduciary duty to her in an attempt to justify the reimbursement she was awarded. This argument is a red herring. The trial court specifically opined that no such breach occurred:

The Court: Okay, yet he took community funds and paid his separate debt and uh, it wasn't, you know community funds he took and he took em all, they were applied to a separate property debt. She he doesn't get credit for half of it even. *He just, and I can understand why he did it. I don't have a problem with him doing it. But uh, but it's a community debt...*

RP *dated May 24, 2013*, 216:4-11 (emphasis added).

Additionally, Ms. Philip did not appeal any of trial courts findings, the absence of findings. All unchallenged findings are verities on appeal. *Brewer v. Brewer*, 137 Wn.2d 756, 766, 976 P.2d 102 (1999) (citing *Moreman v. Butcher*, 126 Wn.2d 36, 39, 891 P.2d 725 (1995)). Thus, it is presumed on appeal that Dr. Philip did not breach his fiduciary duty to Ms. Philip. She is precluded from raising such an argument on appeal.

3. Ms. Philip Was Not Entitled to a Right of Reimbursement Because She Received a Reciprocal Benefit The Funds Loaned By Dr. Philip's Parents.

A right of reimbursement may not arise if the court finds that the separate owner is not unjustly enriched at the expense of the community. *Lindemann*, 92 Wn.App. at 74. "Therefore, the right of reimbursement may not arise if the court finds that the community realized a 'reciprocal benefit' for its use and enjoyment of the separately owned property." *Id.* (internal quotations omitted). Equity will find that the contributing spouse has already been reimbursed. *Miracle*, 101 Wn.2d at 139 (citing *Cross*, 49 Wash.L.Rev. at 777 n. 220, 7790).

A seminal Washington Supreme Court case discussing the "reciprocal benefit" analysis involved a situation where community funds were expended to improve a spouse's separate, real property. *Miracle*, 101 Wash.2d 137, 675, P.2d 1229 (1984). In *Miracle*, the Supreme Court

refused to reimburse a husband for community funds paid towards the purchase contract on wife's separate property residence, which was occupied by the parties during the marriage. *Id.* at 139. The Supreme Court affirmed the decision of the trial court, and recognized that the reasonable rental value of the property exceeded the amount of installment payments made towards the purchase price of the residence. *Id.* at 138. Therefore, the payments constituted reasonable rent and the husband received a reciprocal benefit from his use and enjoyment of the property. *Id.* at 139.

Other courts have used the "reciprocal benefit" analysis to determine whether one spouse is entitled to reimbursement for community funds and/or labor expended on a parties separate business. *See e.g. Lindemann*, 92 Wn.App. 64, 960 P.2d 966 (1998); *See also Hamlin v. Merlino*, 44 Wn.2d 851, 272, P.2d 125 (1954). In *Hamlin*, the Supreme Court opined that the community is not entitled to reimbursement if one spouse's labor in a separate business was adequately compensated by a salary. *Merlino*, 44 Wn.2d at 858-59. Contrastingly, in *Lindemann*, the Court held that Ms. Lindemann was entitled to reimbursement for community labor used to increase the value of her husband's separate business because the community did not receive a reciprocal benefit in the form of a salary. *Lindemann*, 92 Wn.App. at 77.

The Washington State Supreme Court has declined to decide whether a professional degree is "property" that can be valued and divided in the same manner as real property or a separate business. *Washburn v. Washburn*, 101 Wn.2d 168, 176, 677 P.2d 152 (1984). Therefore, any contributions made by the community towards one spouse's professional degree are not subject to a traditional right of reimbursement. *Id.* at 176.

The *Washburn* court held that a contributing spouse may be entitled to compensation for community funds expended towards a professional degree of the other spouse when community assets are depleted in pursuit of the degree, leaving no community assets to divide, and the expected increase in income from the professional spouse has not yet been realized. *See Washburn*, 101 Wn.2d at 178. However, any compensation to the contributing spouse should be considered as a factor in the property division or award of spousal maintenance, not as a distinct right of reimbursement. *See Id.* 177-78. The Supreme Court went on to note that reimbursement is not appropriate in all circumstances:

We point out that where a marriage endures for some time after the professional degree is obtained, the supporting spouse may already have benefited financially from the student spouse's increased earning capacity to an extent that would make extra compensation inappropriate. For example, he or she may have enjoyed a high standard of living for several years, or perhaps the professional degree made possible the accumulation of substantial community

assets which may equally be divided. However, our attention today is centered on the more difficult case of the marriage that is dissolved before the supporting spouse has realized a return on his or her investment in family prosperity.

Id. at 182. Thus, the question of whether or not a spouse is entitled to compensation is necessarily dependent on the facts and circumstances of the case.

Here, there can be little dispute that all of the funds re-paid to Dr. Philip's parents were expended in pursuit and furtherance of his medical education. Without these loans, Dr. Philip would not have been able to afford medical school or to sit for his medical exams. Both loans should be treated as if they were one educational loan and any right to compensation claimed by Ms. Philip should be evaluated under *Washburn*.

The hypothetical situation outlined in *Washburn* is exactly what happened in the present case. Community funds were used to pay for Dr. Philip's medical education and to his transition to the practice of medicine in the United States. See RP dated May 23-24, 2013, 214:11-2. Ms. Philip realized on her husband's professional degree, especially for the final five years of their marriage. His business income for 2005-2009 was \$219,567.00, \$497,171.00, \$425,034.00, \$406,821.00, \$256,437.00, and \$110,957.00, respectively. RP dated May 22, 2013, 50:21-52:3. His

salaries and wages for 2007-2009 were \$100,800.00, \$147,000.00, and \$263,546.00, respectively. *Id.* at 51:20-52:3. Dr. Philip's total earnings in just these few years totaled over \$2.4 million dollars. Needless to say, the parties enjoyed a high standard of living during the marriage.

Ms. Philip's was awarded a substantial sum of assets as a result of the dissolution. At her request, Ms. Philip received the parties' marital residence with a net value of \$351,000.00. *RP dated May 23-24, 2013*, 213:2-3. She was awarded all her of her personal belongings and household goods valued at \$40,000.00. *Id.* at 6-7. She was awarded \$731,000.00 from various joint bank accounts, IRAs, and investment accounts. *RP dated May 23-24, 2013*, 213:1-214:1. Ms. Philip was also awarded \$1,500.00 per month through January 1, 2014, on top of almost \$210,000.00 she had received in maintenance over the previous two years. *See RP dated May 22, 2013*, 38:21-39:11. In all, she received over \$1.4 million dollars in spousal maintenance and assets.

Unlike in *Washburn*, Ms. Philip was appropriately compensated for her contributions to Dr. Philips education. She enjoyed all the fruits of Dr. Philip's increased income during the marriage, received a hefty portion of the community assets, and received three years of maintenance.

Thus, the trial court abused its discretion by awarding Ms. Philip a right of reimbursement because she received a reciprocal benefit.

This Court must also look at this situation practically. By allowing the decision of the trial court to stand, Ms. Philip would be compensated twice. She would receive all the benefits of her husband's increased income during marriage, receive a large settlement upon dissolution, receive maintenance for three years, and then be compensated for Dr. Philip's repayment of the very loan that allowed her to obtain all of it. This type of compensation is not in keeping with the spirit of *Washburn*. *Washburn* set out to equalize and or protect a party that had not had the opportunity to realize on the very investment they contributed to. The trial court's decision to award Ms. Philip a right of reimbursement should be overturned.

C. THE TRIAL COURT ERRED IN REIMBURSING MS. PHILIP FOR THE ENTIRE \$251,000.00.

Even if this Court finds that the trial court did not abuse its discretion in awarding a right of reimbursement, the right or reimbursement in this case was improperly awarded to Ms. Philip alone. The trial court reasoned that Dr. Philip was not entitled to any part of the reimbursement simply because he used community funds to because he

used community funds to repay a separate debt. RP dated May 23-24, 2013, 216:4-9. This is not the proper analysis.

A right of reimbursement arises in the “community,” not an individual spouse. *Connell v. Fransico*, 127 Wn.2d 339, 351, 898 P.2d 831 (1995) (citing Harry M. Cross, Community Property Law in Washington (Revised 1985), 61 Wash.L.Rev. 13, 61, 67 (1986)); *See also In re Marriage of Pearson—Maines*, 70 Wn.App. 860, 869-70, 855 P.2d 1210 (1993). Thereafter, it should have been subject to a just and equitable division of the assets. RCW 26.09.080. That did not happen in this case.

Here, the trial court mistakenly held that Ms. Philip was entitled to reimbursement for the entire amount of the separate obligation paid, \$251,000.00. However, Dr. Philip was also entitled to the reimbursement as part of the marital community. Dr. Philip was entitled and just and equitable share of the community asset used to satisfy the debt. RCW 26.09.080. Therefore, Ms. Philip’s portion of the reimbursement should have been valued at one-half of reimbursement, \$125,500.00.

V. CONCLUSION

Based on the foregoing analysis, the trial court’s decision to award Ms. Philip \$251,000.00 should be reversed and remanded. This Court

should find that Dr. Philip acted within the scope of his statutory authority when he repaid the loans from his parents, or in the alternative Ms. Philip was properly reimbursed for the community funds expended. At the very least, this matter should be remanded to the trial court for a just and equitable division of the reimbursement between the parties.

DATED this 10 day of February, 2014.

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Court of Appeals No. 32041-3-III
Benton County Superior Court Cause No. 10-3-01133-2

WASHINGTON STATE COURT OF APPEALS
DIVISION III

SURESH PHILIP,

Petitioner/Appellant,

vs.

JAYA POULOUSE PHILIP,

Respondent.

DECLARATION OF FILING AND MAILING

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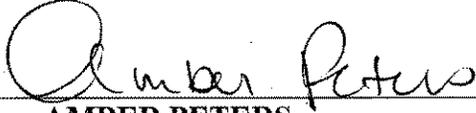
I, Amber Peters, am over the age of eighteen and am competent to testify as to the facts contained in this Declaration.

1. On February 10, 2014, I electronically filed with the Washington State Court of Appeals, Division III the Brief of Petitioner/Appellant and this Declaration of Filing and Mailing.

2. On February 10, 2014, I deposited into Inter-City Processing & Legal Messenger Service a packet addressed to Benjamin Dow, Dow Law Firm, 1060 Jadwin Ave., Ste. 125, Richland, WA 99352-3531, containing a true and correct copy of the Brief of Petitioner/Appellant and this Declaration of Filing and Mailing.

Respectfully submitted this 10 day of February, 2014.

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