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

EDITH LIEBRAND,
Petitioner/Respondent/Cross-Appellant,

v.

FREDERICK D. LIEBRAND,
Respondent/Appellant/Cross-Respondent.

AMENDED BRIEF OF APPELLANT

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III. ASSIGNMENTS OF ERROR

1. The trial court erred in finding the Stateline Road property is community property.
2. The trial court erred in finding the Seattle property to be community property.
3. The trial court erred in granting Esther Liebrand's motion to intervene in this action.
4. The trial court erred in substituting the Estate of Esther Liebrand as Intervenor.
5. The trial court erred in distributing the Seattle property to Edith.
6. The trial court erred in characterizing the mortgage on the Seattle property as a community debt.
7. The trial court erred in characterizing rental proceeds from the Seattle property as community property and awarding them to Edith.
8. The trial court erred in awarding all trust assets from the trusts of Dr. Liebrand's parents to him.
9. The trial court erred in awarding Edith part of his retirement.
10. The trial court erred in awarding spousal support for respondent.
11. The trial court erred in awarding attorney fees to Edith.

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did Dr. Liebrand establish the College Place house owned by him before his marriage to Edith Liebrand was his separate property? (Assignment of Error 1).
2. Did Dr. Liebrand adequately trace the separate property funds used to purchase the Stateline Road real property? (Assignment of Error 1).
3. Did Dr. Liebrand establish the separate character of the funds used to pay off the mortgage on the Stateline Road real property? (Assignment of Error 1).
4. Did Dr. Liebrand adequately trace the separate property funds used to purchase the Seattle property? (Assignment of Error 2).
5. Was the quitclaim deed to the Seattle property from Dr. Liebrand to Edith done solely to facilitate the sale of that property to Esther Liebrand? (Assignment of Error 2).
6. Did the trial court err in granting Esther Liebrand's motion to intervene in this action? (Assignment of Error 3).
7. Did the trial court err in substituting the Estate of Esther Liebrand as intervenor? (Assignment of Error 4).
8. Was the Seattle property Esther Liebrand's property? (Assignment of Error 5).
9. Did the trial court err in distributing Esther Liebrand's real property to Edith? (Assignment of Error 5).

10. Did the trial court lack subject matter jurisdiction to distribute Esther Liebrand's real property to Edith? (Assignment of Error 5).
11. Did the trial court err in characterizing the mortgage on the Seattle property as a community debt? (Assignment of Error 6).
12. Did the trial court err in characterizing rental proceeds from the Seattle property as community property and awarding them to Edith? (Assignment of Error 7).
13. Did the trial court err in awarding all trust assets from the trust of Dr. Liebrand's parents to him? (Assignment of Error 8).
14. Did the trial court err in awarding Edith part of his retirement? (Assignment of Error 9).
15. Did the trial court err in awarding spousal support for respondent? (Assignment of Error 10).
16. Did the trial court err in awarding attorney fees to Edith? (Assignment of Error 11).

V. STATEMENT OF THE CASE

A. Facts

1. Dr. Frederic D. Liebrand

Dr. Frederic D. Liebrand is a resident of Walla Walla where he has resided for 28 years. CP 204. At time of trial, Dr. Liebrand was 54 years old. RP 207. Dr. Liebrand grew up in Oklahoma and is the only surviving child of his parents. CP 204-05. Dr. Liebrand's older brother John predeceased him. RP 205.

Dr. Liebrand is a professor of physics at Walla Walla University. RP 207. Dr. Liebrand earned his bachelor's degree in physics and mathematics and a Bachelor of Science Degree in business administration from Southern College and Purdue in 1985. RP 206. Dr. Liebrand earned a Master of Science degree and his PhD in theoretical physics from Purdue in 1990. RP 206. After graduation from Purdue, Dr. Liebrand was hired as a professor of physics at Walla Walla University, and has been there ever since. RP 207.

2. Edith Liebrand

Edith Liebrand was 55 years old as of the time of trial. RP 101. Edith was raised in Morocco and France and she was educated in France until she was 20 years old. RP 102. After finishing high school, Edith attended college in the United States at Purdue University from 1985 to 1989. RP 102-03. Edith received a degree in English and French

literature. RP 103. Edith later received a master's degree in French Literature from Purdue. RP 103.

3. Dr. Liebrand and Edith are married.

Dr. Liebrand met Edith in the late 1980s while at graduate school. RP 209. On December 17, 1991, following the dissolution of her marriage, Edith and Dr. Liebrand married in Santa Barbara, California. RP 103, 209. Edith became involved in a child custody dispute with her ex-husband. RP 210. Dr. Liebrand contributed tens of thousands of dollars to Edith's efforts in that custody battle. RP 210. Dr. Liebrand's parents contributed another \$70,000-\$80,000 to Edith's cause. RP 156; RP 201.

While they were dating, Edith insisted on having a new car, so Dr. Liebrand spent \$11,000 on buying her a new Acura. EP 211. Apart from that automobile, Dr. Liebrand never transferred any property to Edith except for an IRA for Edith which he established and funded through gifts made by his parents. RP 211.

4. Dr. Liebrand used separate property to purchase the Stateline Road property and to build the house thereon.

Dr. Liebrand owned a house in College Place at the time he married Edith. RP 210. Dr. Liebrand had also owned a house in Indiana together with his parents. RP 210, RP 218. This had been a practice of his parents for all their descendants including their other son and granddaughter. RP218. In June 1995, Dr. Liebrand sold his College Place house for \$123,000. RP 214-15; EX 5.

Dr. Liebrand used the \$123,000 to purchase the land at 1776 Stateline Road in Walla Walla and to start construction on the house. RP 114; RP 215; RP 410. Neither Dr. Liebrand nor Edith had another source of income to make that large of a payment. RP 370. Dr. Liebrand also spent \$16,000 in wheat sale proceeds from his Oklahoma farm for the purchase of the Stateline Road property. RP 215.

At the time Dr. Liebrand purchased the Stateline Road property, he and Edith were earning approximately \$30,000 per year. RP 216. Edith was then pregnant with their son who has Downs Syndrome. RP 104, 211. Edith had no earnings at that time. RP 216.

Dr. Liebrand and Edith have a second child, Miriam. RP 104. Miriam is a student at Gonzaga University. RP 104. Esther's trust currently pays Miriam's college tuition, as Dr. Liebrand's income from the date of separation is insufficient to pay it. RP 354.

5. Dr. Liebrand and Edith start a business.

Edith had been a French teacher at Walla Walla University. RP 212. Edith got fired in a dispute at the college. RP 212. Dr. Liebrand decided to start a business to earn extra income, as Edith was unemployable due to her constant fighting. RP 212. Dr. Liebrand wanted to help Edith set up a position where she could be self-employed. RP 213. Dr. Liebrand and Edith opened restaurants, which operated from 1997 until 2002, when they went bankrupt. RP 213-4.

Dr. Liebrand sold his family farm in Oklahoma for \$250,000 to settle some of Edith's business debts prior to bankruptcy. RP 214; RP 318-19; EX 19, 20. In 1997 and 1998, Dr. Liebrand had also taken out additional debt on the State Line property to help Edith with her businesses. RP 224-25; EX 8. An IRS tax lien arose upon the finalization of the parties' bankruptcy. FL Dep. p. 61. The lien was in Dr. Liebrand's name only. RP II p. 221, 314; EX 16. Edith demanded Dr. Liebrand take responsibility for the tax lien. FL Dep. p. 59.

6. Dr. Liebrand and Edith received substantial gifts of money from his parents.

Between 1995 and 1996, Dr. Liebrand's mother, Esther, gifted \$64,000 to Dr. Liebrand and \$20,400 to Edith. RP 408; RP 411; EX 26. Between 1998 and 2001, Dr. Liebrand's parents gifted Dr. Liebrand and Edith a total of \$205,000. RP 408; EX 26. A pattern thus evolved wherein Dr. Liebrand and Edith generated less than half of what they spent. RP 408-09.

Improvements and repairs to the Stateline Road property were made with money from Dr. Liebrand's parents, Esther and Clair. RP 410. Dr. Liebrand was earning only \$30,000 per year at the time and he needed that income just to survive. RP 216. The mortgage on Stateline Road property was also paid by gifts from his parents and documented by Clair Liebrand in his financial ledger. RP 412.

Esther and Clair funded those gifts from their trusts. Esther's trust and Clair's trust have the same provisions. RP 322, 329; EX 3. The trusts were created in 1994, just prior to the death of Dr. Liebrand's brother, John. EP 327; EX 3.

Esther's trust provides during her lifetime, Esther had no power to direct the trustee to gift principal or interest to a third party. EX 3 at 4-1. The trust also provides any discretion given to the trustee to distribute principal or income to Dr. Liebrand should be exercised liberally. EX 3 at 12-6. The trust further directs the trustee to give Dr. Liebrand assistance for the purchase of a house or any other opportunity or expense deemed by the trust to be in Dr. Liebrand's best interests. EX 3 at 12-6. The ultimate beneficiaries of Esther's trust are her grandchildren. RP 322.

Clair Liebrand died in 2006. RP 217. Dr. Liebrand now serves as the trustee of his father's trust. RP 331. As of the date of trial, Clair Liebrand's trust had about \$400,000 in it. RP 331. Esther Liebrand died in December 2016. RP 2016. Dr. Liebrand now serves as the trustee of his mother's trust. RP 284, RP 329. As of January 16, 2017, Esther Liebrand's living trust had \$127,329.00 in it. RP 139.

From 1998 to 2006 Esther gave Dr. Liebrand monthly gifts of money in amounts of \$1,000 to \$1,500 to meet mortgage payments and taxes on the State Line property. CP 1473.

In addition, to help Dr. Liebrand make needed repairs and improvements to the State Line property, Esther gave him the following amounts from her yearly IRA minimum withdrawal the following amounts:

1. \$64,000 from Esther's IRA and trust on 02/05/2007. EX 14 at 2-7; CP 1474.
2. \$27,182.72 from Esther's checking account on 04/27/2007. EX 14 at 1-4 and 2-27, CP 1474.
3. \$12,000.00 from Esther's checking account on 06/29/2007. EX 14 at 1-4 and 2-29; CP 1474.
4. \$10,000.00 from Esther's checking account on 10/05/2007. EX 14 CP 1474.

Those funds were used to pay for the following work:

1. \$15,389.11 for stucco repairs by Arriola Plastering. EX 14 at 1-5, 2-4, 2-5
2. \$27,389.98 for structural repairs by Ketelsen Construction. EX 14 at 1-5, 2-5, 3-5, 3-19, 3-43, 3-51
3. \$6,000.00 for repair of the front entrance by Modern Flooring. EX 14; CP 1474.
4. \$46,762.96 for improvements by C2 Pools, Ideal Concrete and Kinzer Electric. EX 14 at 3-12, 3-21, 3-22 3-29, 3-38, 3-39, 3-40, 3-41, 3-42, 3-52, 3-68; CP 1474.

These separate property gifts from Esther to Dr. Liebrand provided additional equity of more than \$95,542.00 to him.

The mortgage on the Stateline property was paid on February 20, 2007. EX 14 at 2-9. The final payoff in the amount of \$145,223.14 from Dr. Liebrand and Edith's joint checking account at Banner Bank was paid on the mortgage. EX 14 at 2-18. Without the additional gift of \$113,000.00 in insurance proceeds, the mortgage on the State Line property would not have been paid off at that time. RP 412, 426, 430.

The money used to pay the mortgage on the State Line property was transferred by Esther from her account at Banner Bank or from insurance on Clair Liebrand's life or his investments to the joint account of Dr. Liebrand and Edith and used by them to pay the mortgage on the State Line property on the following dates and in the following amounts:

Transaction Date	Amount	Source Account	Use of Funds	Fred/Edith Acct.	Record Location
09122006	\$13,625.57	C L Estate	Chase mortgage	\$13,625.67	EX 14 1-3
09142006	\$54,141.92	Mass. Met. Ins.	Chase mortgage	\$54,141.92	EX 14 1-3
10182006			Chase mortgage	-\$7,520.00	EX 14 1-5
10252006	\$19,667.56	CL Living Trust (CLLT)	Chase mortgage	\$19,667.56	EX 14 1-3

11032006	\$94,561.34	CLLT (Morgan Stanley)	Chase mortgage	\$94,561.34	EX 14 1-3, 1-11
11202006	\$54,427.28	CLLT (1 st Western Security)	Chase mortgage	\$54,427.28	EX 14 1-3, 1-6
11222006			Chase mortgage	-\$52,182.11	EX 14 1-5, 2-5
11282006	\$177,219.85	Allstate Ins.	Chase mortgage	\$177,219.8 5	EX 14 1-6, 1-12, 2-5
12112006			Chase mortgage	-102,182.11	Ex 14 1-5, 2-5
01022007	\$113,000.00	Esther Checking	Chase mortgage	\$113,000.0 0	EX 14 1-3, 2-20, 2-24
02052007	\$64,000.00	Insurance	Chase mortgage	\$64,000.00	EX 14 2-7
02202007			Chase mortgage (payoff)	-145,238.14	EX 14 20-9 to 20-12, 2-18

From September 12, 2006 until February 20, 2007, at least \$590,643.52 in separate funds were deposited in the Banner Bank account of Dr. Liebrand and Edith. During that same period, \$307,102.36 was paid in four transactions from Dr. Liebrand and Edith's joint account at Banner Bank to reduce and finally pay off the mortgage on the State Line property. In each of those four transactions, sufficient separate property

was present in the Banner Bank account of Dr. Liebrand and Edith to cover the amount of the payment being made.

In 2007, Esther obtained credit cards from Bank of America and Chase Bank. RP 449. At least three people used those credit cards. RP 428. Dr. Liebrand assured Esther he and Edith would repay her for the charges they made on those cards. RP 450. From 2007 to 2011, Dr. Liebrand and Edith made repayment to Esther of charges they placed on those cards. RP 449; EX 15.

Starting in 2012, Esther paid the credit cards directly. RP 427. From 2012 to 2015, the total earned income of Dr. Liebrand and Edith was \$321,000. RP 407. In that same period, Esther made credit card payments on behalf of Dr. Liebrand and Edith in the amount of \$324,000. RP 407. As a result, the earned income of Dr. Liebrand and Edith was funding only 49.7 percent of the parties' expenditures. RP 412.

Dr. Liebrand took a distribution from Esther's trust in 2016 but took none in 2017. RP 355. Dr. Liebrand has not taken any money from Esther's trust to pay his attorney fees since she died. RP 356. Instead, Dr. Liebrand uses the Chase and Bank of America credit cards to pay his legal fees. RP 363.

During the trial and before her death, Esther gave Dr. Liebrand \$1000 per month from her Social Security payment. RP 357. Esther also gave Dr. Liebrand one \$3,000 trust payment. RP. 357. Dr. Liebrand is also the

beneficiary of Esther's IRA, receiving a distribution of \$8,900 per year.

RP 360.

7. Esther Liebrand purchases the Seattle property.

In October 2010, Esther executed a durable power of attorney, making Dr. Liebrand her attorney in fact. RP 217; EX 7. At that time, Esther was not easily mobile, and to look for an investment, she needed someone able to travel. RP 217. Dr. Liebrand was attracted to the Seattle real estate market, and the real estate market had just crashed. RP 217.

Dr. Liebrand recalled his parents' experience in purchasing a rental for his older brother to live in while at school in Kansas and for himself in Indiana. RP 218. Esther wanted to do the same thing for her granddaughter Miriam. RP 218. Incidentally, Edith's son was attending school in Seattle. RP 218.

Dr. Liebrand flew to Seattle and met with a local realtor, Katherine Peterson, who escorted him to view various locations. RP 218, 295-96. It took Dr. Liebrand and Ms. Peterson two or three months to find a suitable property. RP 296. Ms. Peterson understood Dr. Liebrand was working for Esther and Esther was going to be the purchaser of the property. RP 296.

Dr. Liebrand returned to Walla Walla with photographs of the property to show to Esther. RP 219. Dr. Liebrand made an offer to purchase the property at 1127 A 18th Avenue in Seattle. CP 296. After the property had been selected, Esther came to Seattle to view it. RP 219.

Prior to Esther's involvement, the parties had briefly explored buying the property themselves, but that failed immediately due to income insufficiency and a tax lien against Dr. Liebrand. RP 301. Fred was unable to participate in the transaction, as he had an outstanding tax lien. RP 221, 226, 297, 375; EX 8, 16. The tax lien was not against Edith. RP 221, 298, 314.

When the offer to purchase was made, it was proposed Esther would be the purchaser of the property. RP 296. The lender refused to allow Esther to be the sole purchaser because of her age and required a co-purchaser. RP 297, 305-06. To circumvent the tax lien issue, the lender told Dr. Liebrand to execute a quitclaim deed to the property to Edith. RP 298-99, 307-08, 311-312; EX 1 at 27. The lender made the demand for the quitclaim deed over the telephone. RP 369.

The lender thus agreed Esther could be the purchaser with Edith. RP 298. Edith was named as a grantee on the deed to the property solely to facilitate the sale. RP 299, 302, 335.

Dr. Liebrand executed the quitclaim deed to Edith on March 11, 2011, the same day as the deed from Sterling Savings to Esther and Edith. RP 303-04, 346, EX 1 at 26, 27.

The Seattle property was funded with a down payment of \$59,337.84. RP 443. The funds used to purchase the Seattle property were Esther's money. RP 229. The money used for the down payment was transferred

by Esther from her account at Fidelity to her account at Banner Bank to the joint account of Dr. Liebrand and Edith on the following dates and in the following amounts:

Date	Esther Banner Acct.	Joint Accounts	Use of Funds	Fred/Edith Acct.	Record Location
10/08/2010	\$7,000.00		Purchase Townhome	\$7,000.00	EX 13 C1, C 2, D 20
12/31/2010	\$5,000.00		Purchase Townhome	\$5,000.00	EX 13 C9
01/11/2011	\$3,000.00		Purchase Townhome		EX 13 C 17, C11
01/21/2011	\$39,000.00		Purchase Townhome	\$39,000.00	EX 13 C11
03/04/2011		\$5,000.00	Purchase Townhome	\$5,000.00	EX 13 B 3, B 6
03/11/2011		\$9,400.00	Purchase Townhome	\$9,400.00	EX 13, B7, B 8, C 14, C 17
03/17/2011				(\$59,337.84)	EX 13
Totals	\$63,400.00			\$6,062.16	B 8

On March 17, 2011, a wire transfer in the amount of \$59,337.84 was made from Dr. Liebrand and Edith's Banner Bank joint checking account to Golf Escrow to help fund the purchase of the Seattle property. EX 14 (Banner Bank at 6-10). Dr. Liebrand and Edith invested nothing in the Seattle property. RP 324.

A week after purchasing the Seattle property, Esther moved to refinance it in her own name at a lower interest rate. RP 234, 236. That refinance took over one year to complete. RP 237. The lender wanted one year of rental receipts to approve the loan. RP 237. The refinance closed on March 20, 2013. RP 237, EX 10. Esther reported the entire rental income and expenses for the Seattle property on Schedule E of the federal income tax forms for 2011 through 2014. RP 245-246; EX 11. Edith and Fred claimed none.

Dr. Liebrand and Edith made monthly payments on the mortgage on the Seattle property and were reimbursed by rent payments received from the Seattle property. RP 192-93; RP 337. After the divorce started, Edith kept the rent money and did not pay the mortgage. RP 337. The outstanding balance on the mortgage on the Seattle property as of June 2017 was \$190,463. RP 106.

The parties agree the Seattle property has a market value of \$600,000.00 RP 123; RP 305; RP 308. In her will, Esther devised the Seattle property to her trust. RP 284.

7. Dr. Liebrand invested in a consumer solar project.

In 2012, Dr. Liebrand help for a community solar project where part of the proceeds went back to the participants. RP 287. Dr. Liebrand invested \$23,000.00; Edith invested nothing. RP 287. Dr. Liebrand also invested \$10,000.00 for his son Andrew and \$14,000.00 for his daughter Miriam.

RP 287. Esther provided the funds from her IRA distributions to invest in the project. RP 287.

A community solar project is set up to allow local government to be more energy efficient by bringing in community investors to make their buildings more energy efficient. RP 285. In a community solar project, private persons purchase solar equipment and place it on public buildings. The public entity gets the benefit of electricity and keeps the equipment, returning the money to the investors as “production incentive.” RP 285.

The community solar project will terminate per statute in 2020. RP 288. The maximum return is \$5,000 per person per year but only \$5,000 per year per couple. RP 289. Dr. Liebrand invested in the community solar project in his name, with Edith identified as part of a couple. RP 290. Checks will be issued in 2017, 2018, 2019, and 2020. RP 291. Dr. Liebrand gave Edith half the money he received from the project during their marriage. RP 341.

8. Dr. Liebrand contracted mercury poisoning.

Dr. Liebrand undergoes chelation therapy for mercury poisoning. RP 208. Dr. Liebrand first learned of his mercury toxicity in 2016 when he discovered it in the back of a medicine cabinet used by Edith. RP 208; RP 352. Dr. Liebrand had symptoms for three years prior to the end of his marriage. RP 382. Dr. Liebrand initially thought his symptoms were the result of stress induced by the marriage dissolution. RP 353.

Dr. Liebrand found mercury among Edith's things in a medicine cabinet in their Stateline Road home. RP 382; RP 387. Dr. Liebrand suspects Edith caused his mercury poisoning. RP 335. Dr. Liebrand provided information on his mercury poisoning to the police. RP 353. Dr. Liebrand took three hair samples from his hairbrushes and sent them to a toxicologist for testing. RP 382. One sample was from the time period before the separation; one from the time of the separation; and one was taken at the time of testing, one year after the separation. The oldest two showed mercury and lead, while the current one was free from toxic elements. RP 382.

9. Important documents are missing from Dr. Liebrand's files at the Stateline Road Property.

Several important documents are missing from Dr. Liebrand's files at his home. Missing documents include the sale documents for Dr. Liebrand's Oklahoma family farm and his father's life insurance policy. RP 357; RP 364.

10. The Stateline Road property needs significant repairs.

The house on the State Line Road property is approximately 4000 square feet. RP 352. The parties agree the house needs \$150,000 to \$200,000 in repairs. RP 376-77.

11. The parties' retirement accounts.

Dr. Liebrand has a retirement account through his employer with a balance of \$143,750 as of August 2017. CP 982. Edith has two

traditional IRAs with balances of \$66,841 and \$74,194, respectively. CP 982. Edith also has a retirement account with TIAA/CREF with a balance of \$40,788. CP 983.

Contributions to Edith's retirement account accrue faster than to Dr. Liebrand's retirement account. Dr. Liebrand can contribute two and one-half percent of his pre-tax earnings to his retirement account, with an equal amount contributed by his employer. RP 380. Edith can contribute ten percent of her earnings with an equivalent contribution from her employer. RP 380-81. Thus, the contribution to Edith's retirement is four time greater than is the contribution to Dr. Liebrand's retirement. RP 381.

B. Procedural History.

1. Pretrial proceedings.

The parties separated on September 11, 2015. CP 1. Edith filed her petition for dissolution of marriage on September 11, 2015. CP 1-4. In a temporary order dated November 24, 2015, the trial court awarded Edith temporary maintenance of \$1,400 per month, ordered Dr. Liebrand to pay all community debts during the pendency of this action, awarded Edith use of the Esther's 2003 Camry, and ordered Dr. Liebrand to pay Edith \$2,800 in attorney fees. CP 84.

On March 21, 2016, the trial court ordered the parties to account for all rental proceeds received from the rental of the Seattle property since separation. CP 304.

On April 14, 2016, the trial court entered an order allowing Esther Liebrand to intervene in this action with respect to her ownership of the Seattle property. CP 323.

On May 1, 2017, the trial court entered an order directing Dr. Liebrand to pay Edith temporary attorney fees in the amount of \$10,000.00. CP 560.

On May 3, 2017, the trial court entered an order substituting the Estate of Esther Liebrand as intervenor. CP 562-63.

2. Esther Liebrand's motion to intervene is granted.

On March 15, 2016, Esther Liebrand filed a motion to intervene in the dissolution action to protect her ownership of real property at issue in this action. CP 289. On April 14, 2016, the trial court granted Esther's motion to intervene. CP 323-24.

3. Trial.

Trial in this action commenced on June 27, 2017. RP 92. At trial, testimony was offered by the parties' experts as to the character of the Stateline Road property and the Seattle property as community or separate property. Edith offered as Exhibit 4 the Joint Statement of Thomas P. Sawatzki and Scott Martin. EX 4. Edith's expert Tom Sawatzki testified he prepared the Joint Statement after conversation with Tom Sawatzki. RP 394; EP 435.

Mr. Sawatzki testified regarding the down payment for the Seattle property, the funds used to make the down payment were not traceable

and community funds were clearly commingled in the down payment. RP 437. Mr. Martin testified multiple transfers by Esther Liebrand equal the entire amount of the down payment for the Seattle property. RP 397. The record supports Mr. Martin's testimony. *See* EX 13, B 3, B 4, B 6, B 7, B 8; C 1, C 9, C 11, C14, C 17, D 20.

Mr. Martin specifically identified a \$39,000 deposit from Esther Liebrand from Banner Bank on January 11, 2011. RP 399. Mr. Martin testified there was no indication in the records that deposit was a gift. RP 399. Mr. Martin also testified Dr. Liebrand and Edith did not have the funds to purchase the Seattle property. RP 400; RP 410.

Further, as described above in paragraph V A 7, Dr. Liebrand introduced evidence to establish each of the deposits of funds received from Esther Liebrand that comprised 100 percent of the \$59,337.84 down payment made on March 17, 2011 from Dr. Liebrand and Edith's Banner Bank joint checking account to Golf Escrow to help fund the purchase of the Seattle property. EX 14 (Banner Bank at 6-10).

Regarding the Stateline Road property, Mr. Martin testified Dr. Liebrand was unable to provide the bank statements to establish the purchase of the Stateline Road property with separate property. RP 400-01; RP 422. Mr. Martin did testify that information he obtained informed him the funds to purchase the Stateline Road property came from his residence owned prior to marriage. RP 410. Additionally, the

construction checks from the home were submitted to the court and were entirely written by Dr. Liebrand. EX 14 at 3-36 to 3-44. In contrast, Edith wrote almost all the checks for community expenses.

Moreover, as set forth in paragraph V A 4, Dr. Liebrand testified in June 1995, he sold his College Place house for \$123,000 and used the \$123,000 to purchase the land at 1776 Stateline Road in Walla Walla and to start construction on the house. Neither Dr. Liebrand nor Edith had another source of income to make that large of a payment. Dr. Liebrand also testified he spent \$16,000 in wheat sale proceeds from his Oklahoma farm for the purchase of the Stateline Road property.

Mr. Martin also testified the cost to repair and remodel the Stateline Road property, including repair of the stucco and construction of a swimming pool, was funded by gifts from Dr. Liebrand's parents over time. RP 410. Mr. Martin identified gifts from Dr. Liebrand's parents in 1995 and 1996 totaling \$64,000 to Dr. Liebrand and \$20,400 to Edith. RP 408. Mr. Martin also identified gifts from 1998 to 2001 from Dr. Liebrand's parents to Edith and him totaling \$205,000. RP 408.

Mr. Martin also testified the funds to pay off the mortgage on the Stateline Road property came from two large deposits into the Banner Bank account for Dr. Liebrand Edith. RP 402. Those deposits consisted of a \$113,000 deposit in January 2007 and a \$64,000 deposit on February 5, 2007. RP 402; RP 425; EX 14 1-3. Both of those deposits consisted of

proceeds of life insurance policies on Dr. Liebrand's father, Clair Liebrand. RP 402; 412. Mr. Martin testified that but for the \$113,000 deposit, the pay off on the mortgage on the Stateline Road property could not have been made. RP 430.

Mr. Martin acknowledged most of the help he received on this case came from Dr. Liebrand. RP 418.

4. The trial court's oral ruling.

On June 30, 2017, the trial court gave its oral ruling. The trial court ruled, considering the testimony of the CPAs, that they could not trace the documentation and payments, and everything had been commingled, the Stateline Road property is a community asset. RP 492. Regarding the Seattle property, the trial court agreed with the CPAs that everything has been commingled and, therefore, the Seattle property is also community property. RP 492. The trial court awarded the Seattle property to Edith and the Stateline Road property to Dr. Liebrand. RP 492. The trial court allocated the remaining mortgage on the Seattle property, approximately \$190,000, one-half to each party. RP 492.

The trial court awarded the Cabo San Lucas timeshare to Dr. Liebrand. RP 493. The trial court awarded one-half of the Walla Walla Free Solar payments to each party. RP 493. The trial court ordered the IRS debt lien would be Dr. Liebrand's responsibility. RP 493. The trial court awarded Edith \$33,805, in addition to the \$10,000 previously awarded to her. RP

493. The trial court ordered Dr. Liebrand to pay Edith maintenance at \$2,000 per month starting June 30, 2017. RP 493.

The trial court awarded Dr. Liebrand his IRA of \$66,841 to him. RP 493. The trial court awarded Edith's IRA of \$74,194.00 to her. RP 494. The trial court awarded Dr. Liebrand \$91,000 of his 401K and awarded Edith \$53,750 of that asset. RP 494. The trial court awarded Edith her 401K CREF, valued at \$40,788.00. RP 494.

In its oral ruling, although it found the funds used to purchase the Stateline Road property and the Seattle property commingled, it did not find those funds hopelessly commingled.

5. Dr. Liebrand files a motion for reconsideration.

On August 1, 2017, Dr. Liebrand filed his motion for reconsideration. CP 942-946. Therein, Dr. Liebrand sought reconsideration of the trial court's characterization of assets, its division of assets, the award of attorney fees and the award of maintenance. CP 942. Dr. Liebrand argued that while the trial court found funds of the parties, separate and community, to have been commingled, the funds were not "*hopelessly commingled.*" (Citing *Marriage of Skarbeck*, 100 Wn. App. 444, 448, 997 P. 2d 447 (2000) and *Marriage of Schwarz*, 192 Wn. App. 180, 190, 368 P.3d 173 (2016)). CP 943. Dr. Liebrand pointed to the testimony of Scott Martin which showed the infusions of cash by Dr. Liebrand's parents to Dr. Liebrand. CP 943. Dr. Liebrand argued exact contributions were

shown and the destination of those funds were demonstrated by clear and convincing evidence. CP 943. Dr. Liebrand argued the finding that any of Esther Liebrand's property is a community asset is wholly unsupported by the evidence and by any theory of law. CP 944. Dr. Liebrand argued under RCW 26.09.140, any award of attorney fees must consider the financial resources of the parties, and as the trial court had awarded more than half the parties' assets to Edith and awarded her \$120,000 in maintenance over five years, each party should pay their own attorney fees. CP 944. Dr. Liebrand also argued after its award of maintenance Edith will have significantly more income than him. CP 944-45.

In his supporting declaration, Scott Martin testified he and Mr. Sawatzki had not agreed the funds had been hopelessly commingled. CP 947. Mr. Martin recited the trail of funds for the 2007 payoff of the mortgage on the Stateline Road property, including the \$113,000 contributed by Esther Liebrand on January 2, 2007 and the insurance proceeds received by Dr. Liebrand from the death of his father, which funded the \$145,238.14 mortgage payoff on February 20, 2007. CP 948. Mr. Martin also summarized the amounts listed by Esther Liebrand in her April 24, 2016 declaration, which amounted to \$402,102.50 in funds given to Dr. Liebrand for the Stateline Road property, which included the \$145,238.14 mortgage payoff on that property. CP 949. Mr. Martin also recited the significant contribution made by Esther Liebrand to the

spending made by Dr. Liebrand and Edith from 2012 to 2015. CP 949-50.

The trial court denied reconsideration on August 23, 2017. CP 995-97.

6. The trial court entered findings of fact, conclusions of law and a final divorce order.

On August 8, 2017, the trial court entered findings of fact and conclusions of law that incorporated the rulings made during the trial court's oral decision. CP 978-983. On August 8, 2017, the trial court also entered its Final Order of Divorce also with provisions consistent with the trial court's oral ruling. CP 984-989.

7. Dr. Liebrand timely filed a notice of appeal.

On September 11, 2017, Dr. Liebrand filed a notice of appeal from the findings of fact, conclusions of law, final order of divorce and order denying reconsideration. CP 1004-1023.

VI. ARGUMENT

A. The trial court erred in characterizing the Stateline Road Property as community property.

Error is assigned to Findings of Fact 8, 9, 10, 11 and Exhibit A thereto. CP 979, CP 982-83. Error is assigned to the Final Divorce Order, paragraphs 2, 7, 9, 11 and Exhibit A thereto. CP 984-989. Error is assigned to the Order Denying Motion for Reconsideration. CP 995-997.

1. Standards of Review

The trial court's characterization of property as separate or community is a mixed question of law and fact. *Marriage of Schwarz*, 192 Wn. App.

180, 191-92, 368 P. 3d 173 (2016); *Marriage of Kile and Kendall*, 186 Wn. App. 864, 876, 347 P. 3d 894 (2105). The time of acquisition, the method of acquisition, and intent of the donor are issues for the trier of fact. *Marriage of Schwarz*, 192 Wn. App. 192; *Marriage of Kile and Kendall*, 186 Wn. App. 876; *Marriage of Martin*, 32 Wn. App. 92, 94-95, 645 P. 2d 1148 (1982). The ultimate characterization of the property as separate or community is a question of law reviewable *de novo*. *Schwarz*, 192 Wn. App. 192; *Kile*, 186 Wn. App. 876; *Martin*, 32 Wn. App. 94.

2. The Stateline Road property is appellant's separate property.

The trial court is not bound to award property to the individual or the community based on the property's classification, but the court must have in mind the correct character and status of the property as community or separate before any theory of division is ordered. *Marriage of Schwarz*, 192 Wn. App. 191; *Blood v. Blood*, 69 Wn. 2d 680, 682, 419 P. 2d 1006 (1966); *Shaffer v. Shaffer*, 43 Wn.2d 629, 262 P. 2d 763 (1953).

The character of property as separate or community is established at the point of acquisition. *Marriage of Schwarz*, 192 Wn. App. 188; *Marriage of Skarbeck*, 100 Wn. App. 447; *Marriage of Pearson-Maines*, 70 Wn. App. 860, 865, 855 P. 2d 1210 (1993).

Separate property is created by acquisition prior to marriage, acquisition during marriage by gift or inheritance, or by the traceable proceeds of separate property, or in the case of earnings or accumulations,

acquired during permanent separation. *Marriage of Schwarz*, 192 Wn. App. 188-89; *Marriage of White*, 105 Wn. App. 545, 550, 20 P. 3d 481 (2001); RCW 26.16.010.

Dr. Liebrand's College Place property was owned by him prior to marriage. RP 157; RP 210. Dr. Liebrand's College Place property was therefore his separate property. *Marriage of Schwarz*, 192 Wn. App. 188-89. Dr. Liebrand's testimony was sufficient to establish the separate character of the College Place property. *Marriage of Schwarz*, 192 Wn. App. 194.

Separate property remains separate property through all its changes and transitions. *Marriage of Skarbeck*, 100 Wn. App. 448. Separate property is presumed to remain separate property in the absence of evidence sufficient to show an intent to transmute the property from separate to community property. *In re Estate of Borghi*, 167 Wn. 2d 480, 484, 219 P. 3d 932 (2009). As set forth in paragraph V A 4, supra, in June 1995, Dr. Liebrand sold his College Place house for \$123,000, and he used those funds to purchase the land at 1776 Stateline Road in Walla Walla and to start construction on the house. RP 114; RP 214-15; RP 215; RP 410; EX 5. Dr. Liebrand also spent \$16,000 in wheat sale proceeds from his Oklahoma farm for the purchase of the Stateline Road property. RP 215. The infusion of such large amounts of separate real property to fund

the purchase of the Stateline Road property supports its characterization as Dr. Liebrand's separate real property.

The absence of banking records showing the 1997 purchase of the Stateline Road property is not fatal to Dr. Liebrand's efforts to establish the separate character of that property. It is unrealistic given the length of the parties' marriage to require exhaustive documentation of the funding of that purchase. *Marriage of Schwarz*, 192 Wn. App. 191-92 (“[I]n a longer-term marriage where relevant financial activity took place many years earlier, it is unrealistic to require exhaustive documentation...”).

The characterization of the Stateline property as Dr. Liebrand's separate real property is supported by the presumption if there are both separate and community funds and there are sufficient separate funds from which the payments can be made, then the payments will be presumed made from such separate funds. *Marriage of Pearson-Maines*, 70 Wn. App. 867 (*Quoting Pollock v. Pollock*, 7 Wn. App. 394, 404, 499 P. 2d 231 (1972)).

At the time of the purchase of the Stateline Road property, Edith was pregnant with their son and she had no earnings at that time. RP 104, RP 211, RP 216. Dr. Liebrand was then earning only \$30,000 per year at the time and he needed that income just to survive. RP 216. Thus, there were no community funds then available to purchase the Stateline Road property. Under *Marriage of Pearson-Maines* and *Pollock v. Pollock*, the

presumption therefore prevails that Dr. Liebrand's separate funds funded the purchase of Stateline Road.

Edith's name on the title to the Stateline Road property does not support the trial court's characterization of that property as community property. *Estate of Borghi*, 167 Wn. 2d 492 (Madsen, J. concurring); *Marriage of Schwarz*, 192 Wn. App. 209; *Marriage of Skarbeck*, 100 Wn. App. 448.

Property acquired during marriage is presumed to be community property. *Marriage of Schwarz*, 192 Wn. App. 189. This presumption is not a very strong one and will always yield to a preponderance of the evidence. *Marriage of Schwarz*, 192 Wn. App. 189-90; *State ex rel. Marshall v. Superior Court*, 119 Wash. 631, 637, 206 P. 362 (1922). Dr. Liebrand's testimony therefore overcomes the presumption Stateline Road is community property.

3. The trial court erred in finding the Stateline Road property is community property.

The trial court agreed with the testimony of the CPAs that everything has been commingled and therefore the Stateline Road property is community property. RP 492. The trial court did not find everything had been hopelessly commingled. The trial court therefore applied the wrong standard for determining whether an asset is community property. As this Court explained in *Marriage of Schwarz*, the commingling of separate and community funds that may give rise to a presumption that all are

community property is not commingling in the ordinary sense. “[I]t must be hopeless commingling...” 192 Wn. App. 190. By failing to find the funds used to purchase the Stateline Road property were hopelessly commingled, the trial court failed to follow this Court’s decision in *Schwarz*, and thereby committed reversible error.

If the sources of the funds can be traced and identified the separate identity of the funds is preserved. *Marriage of Schwarz*, 192 Wn. App. 191; *Marriage of Skarbeck*, 100 Wn. App. 448; *Marriage of Pearson-Maines*, 70 Wn. App. 867. Dr. Liebrand clearly identified two sources of funds used to purchase the Stateline Road property, the \$123,000 sale proceeds from his College Place property owned prior to marriage and the \$16,000 in wheat sale proceeds from his Oklahoma farm. RP 114; RP 214-15; RP 215; RP 410; EX 5. Dr. Liebrand’s testimony on this issue constitutes clear and convincing evidence. *Marriage of Schwarz*, 192 Wn. App. 190; *Dalton v. State*, 130 Wn. App. 653, 667, 124 P. 3d 305 (2005).

In light of the foregoing, Findings of Fact 8, 9, 10, 11 and Exhibit A thereto, paragraphs 2, 7, 9, 11 and Exhibit A to the Final Divorce Order, and the Order Denying Motion for Reconsideration must be reversed.

B. The trial court erred in finding the Seattle property to be community property.

Appellant assigns error to paragraphs 2, 7 of the Final Divorce Order. CP 984, 985; App. 1. Error is assigned to paragraph 2 in Exhibit A to the Final Divorce Order. CP 988; App. 1. Error is assigned to Findings of

Fact 8, 9. CP 979; App. 2. Error is assigned to paragraph 2 in Exhibit A to the Findings and Conclusions about a Marriage. CP 982-83; App. 2. Error is assigned to the Order Granting Motion for Leave to Intervene. CP 323-24. Error is assigned to the Order Denying Reconsideration. CP 995-997. App. 3.

1. The trial court erred in granting Esther Liebrand's motion to intervene in this action.

Persons other than the parties to an action for dissolution of marriage have no right to intervene in such an action. *Arneson v. Arneson*, 38 Wn. 2d 99, 101, 227 P. 2d 1016 (1951) (“*Other persons cannot be made parties to the action by any statutory form of notice, nor can they intervene therein.*”). By granting Esther Liebrand leave to intervene, the trial court thereby committed reversible error.

2. The trial court erred in substituting the Estate of Esther Liebrand as Intervenor.

Error is assigned to the Order Substituting Estate of Edith[sic] Liebrand as Intervenor. CP 562-63. As set forth paragraph B 1, above, the trial court lacked authority to allow third parties to appear in this action.

3. The trial court lacked subject matter jurisdiction to distribute Esther Liebrand's real property to Edith.

The trial court's lack of subject matter jurisdiction can be raised for the first time on appeal. RAP 2.5 (a) (1).

A court in a dissolution hearing has only those powers which may be inferred from a broad interpretation of the legislation governing the

proceeding. *Arneson*, 38 Wn. 2d 100; *Soriano v. Soriano*, 44 Wn. App. 420, 421, 722 P. 2d 132 (1986); *In re: Marriage of McKean*, 110 Wn. App. 191, 38 P. 3d 1053 (2002).

The court in a dissolution proceeding lacks subject matter jurisdiction to award property of third parties to one of the parties in such a proceeding. *Arneson*, 38 Wn. 2d 103; *Soriano*, 44 Wn. App. 420; *See In re Marriage of McKean*, 110 Wn. App. 191, 194-95, 38 P. 3d 1053 (2002).

Esther Liebrand owned the Seattle property. Esther Liebrand refinanced the Seattle property in her own name. RP 234-40; EX 10. Esther listed the Seattle property and the rental income received therefrom on Schedule E of her federal income tax returns in 2011 through 2014. RP 243-46; EX 11, 12.

In paragraph 2 to Exhibit A to the trial court's Findings of Fact and Conclusions of Law, the trial court characterized the Seattle property as community property and awarded it to Edith. CP 982. In Findings 8 and 9, the trial court found that characterization and distribution just and equitable. CP 979. Under *Arneson*, *Soriano*, and *McKean*, the trial court lacked subject matter over the Seattle property. By awarding the property to Edith, the trial court committed reversible error.

The quitclaim deed for the Seattle property from Dr. Liebrand to Edith does not alter the foregoing conclusion. As indicated in paragraph V A 7, *supra*, the quitclaim deed was done solely to facilitate the sale to

Edith of the Seattle property. Edith's name on the title to the Seattle property does not support the trial court's characterization of that property as community property. *Estate of Borghi*, 167 Wn. 2d 492; *Marriage of Schwarz*, 192 Wn. App. 209; *Marriage of Skarbeck*, 100 Wn. App. 448.

4. The trial court erred in characterizing the Seattle property as community property.

Assuming, arguendo, the trial court had jurisdiction over the Seattle property, it nevertheless erred in characterizing the Seattle property as community property. As set forth in paragraph V A 7, *supra*, one hundred percent of the \$59,337.84 paid from Dr. Liebrand and Edith's Banner Bank account on March 17, 2011 was contributed by Esther Liebrand. RP 229, 248-249; EX 13. Neither Dr. Liebrand nor Edith contributed anything to the purchase of the Seattle property. RP 231, RP 258, RP 260, RP 324. The balance of the purchase price was paid with a mortgage on the property, which Esther promptly changed with a refinance that made her the only obligor on the substitute mortgage. RP 234-237, EX 10. Dr. Liebrand and Edith made monthly payments on the mortgage on the Seattle property and were reimbursed by rent payments received from the Seattle property. RP 192-93; RP 337, RP 398.

The presence of community funds in the Banner Bank account of Dr. Liebrand and Edith in March 2011 does not support characterization of the \$59,337.84 wired from that account on March 17, 2011 as a down payment made with community funds. As in *Schwarz*, *Skarbeck* and

Pearson-Maines, the funds used to make that down payment were traced by Dr. Liebrand and Scott Martin with reasonable accuracy to deposits made to that account with funds supplied by Esther. RP 247-249, EX 13; RP 396-97, RP 413.

Further, under *Pearson-Maines* and *Pollock*, since sufficient separate funds were present in that account, it is presumed the down payment was made with those separate funds.

Moreover, under *Binge Estate*, 5 Wn. 2d 446, 466, 105 P. 2d 689 (1940), the rule hopelessly commingled funds are presumed community is subject to the exception that when community property is inconsiderable in comparison with the separate property, the mass remains separate. In this regard, Scott Martin testified “*the account started with very little. It built up balances from these transfers in from Esther and then it was this \$59,000 that went out for the down payment.*” RP 417-18.

To the extent Edith had an interest in the Seattle property together with Esther, the extent of that interest is presumed to be determined by the extent of her contributions to the purchase price. *Cummings v. Anderson*, 94 Wn. 2d 135, 140-41, 614 P.2d 1283 (1980); *Iredell v. Iredell*, 49 Wn. 2d 627, 631, 305 P. 2d 805 (1957). Edith contributed nothing to the purchase price of the Seattle property. RP 231, RP 258, RP 260, RP 324. Therefore, Edith had no interest in the Seattle property.

5. The trial court had no jurisdiction over the Seattle property, as it as an asset of Esther Liebrand's trust.

Esther Liebrand died in December 2016. RP 258. Under the terms of her Will, the Seattle property was transferred to her trust. RP 284. Dr. Liebrand is the trustee of Esther's trust. RP 355. Edith did not attempt in this action to obtain in personam jurisdiction over Dr. Liebrand in his capacity as trustee of Esther's trust. As it did not have in personam jurisdiction over Dr. Liebrand in his capacity as trustee, the trial court erred in awarding the Seattle property, a trust asset, to Edith. *See In re Marriage of McKean*, 110 Wn. App. 196.

In light of the foregoing, the Court should reverse paragraphs 2, 7 of the Final Divorce Order, paragraph 2 in Exhibit A to the Final Divorce Order, Findings of Fact 8, 9, paragraph 2 in Exhibit A to the Findings and Conclusions about a Marriage the Order Granting Motion for Leave to Intervene, the Order Substituting Estate of Edith[sic] Liebrand as Intervenor, and the Order Denying Reconsideration.

6. The trial court erred in characterizing the mortgage on the Seattle property as a community debt.

Error is assigned to Finding of Fact 11, paragraph 2 of Exhibit A to the Findings of Fact, and Paragraph 1 of the Division of Community Debts in Exhibit A. CP 979, CP 982-83. Error is assigned to Paragraph 11 and paragraph 2 of Exhibit A to the Final Divorce Order, and Paragraph 1 of the Division of Community Debts in Exhibit A. CP 986, CP 988-89. As

set forth in paragraph V B 5, the trial court lacked subject matter jurisdiction to award the Seattle property to Edith, it follows under *Marriage of McKean*, the trial court did not also have authority to characterize the mortgage debt on the property as a community obligation. Nor did it have jurisdiction to allocate any part of that obligation to Dr. Liebrand. Instead, the mortgage obligation on the Seattle property was, is and remains an obligation of Esther Liebrand's trust.

7. The trial court erred in characterizing rental proceeds from the Seattle property as community property and awarding them to Edith.

Error is assigned to Findings of Fact 9 and 10 and paragraph 3 to Exhibit A thereto. CP 979, CP 982. Error is assigned to Paragraph 8 and paragraph 3 to Exhibit A to the Final Divorce Order. CP 985, CP 989. As the Seattle property was the separate property of Esther Liebrand, so too were the rents from that property RCW 26.16.010. As set forth in paragraph V B 5, the trial court lacked subject matter jurisdiction to award the Seattle property to Edit. It follows under *Marriage of McKean*, the trial court also did not have authority to characterize the rent from the Seattle property as community property or to award those rents to Edith.

8. The trial court erred in awarding all trust assets from the trust of Dr. Liebrand's parents to him.

Error is assigned to paragraphs 7, 8, 9 and paragraph 2 of Separate Property in Exhibit A thereto. CP 985, 989; App. 1. Error is assigned to

Findings of Fact 8, 10 and paragraph 2 of Separate Property in Exhibit A thereto. CP 979, 983; App. 2.

In paragraph 2 of Separate Property in Exhibit A to the Findings of Fact and Conclusions of Law and the Final Divorce Order, the trial court purported to convey to Dr. Liebrand all trust assets from the Clair Liebrand and/or Esther Liebrand trust are awarded to him. CP 983, 989. Under *Marriage of McKean*, the trial court had no jurisdiction over those trust assets. The trial court thereby improperly inflated the assets it was distributing in making its just and equitable distribution of the parties' property.

C. Remand to the trial court is necessary for a proper distribution of the parties' assets.

The trial court's mischaracterization of over \$1,000,000 of assets and liabilities as community property and its distribution of trust assets over which it had no jurisdiction clearly influenced its division of the parties' property. Further, it is not clear had it done so correctly, the trial court would have divided the property as it did. Remand to the trial court for a proper distribution is appropriate. *Marriage of Skarbeck*, 100 Wn. App. 192.

D. The trial court erred in awarding Edith part of his retirement.

Error is assigned to Findings of Fact 9, 10 and paragraph 6a to Appendix A thereto. CP 979, 982. Error is assigned to paragraph 8 of the

Final Divorce Order and paragraph 6a to Appendix A thereto. CP 885, 988.

Washington courts recognize that consideration of each party's responsibility for creating or dissipating marital assets is relevant to the just and equitable distribution of property. *In re Williams*, 84 Wn. App. 263, 270, 927 P. 2d 679, *review denied*, 131 Wash.2d 1025, 937 P.2d 1102 (1997); *In re Steadman*, 63 Wn. App. 523, 527, 821 P.2d 59 (1991); *In re Clark*, 13 Wn. App. 805, 808–09, 538 P.2d 145, *review denied*, 86 Wash.2d 1001 (1975). The trial court has discretion to consider whose “negatively productive conduct” depleted the couple's assets and to apportion a higher debt load or fewer assets to the wasteful marital partner. *Williams*, 84 Wn. App. 270; *Clark*, 13 Wn. App. at 809, 538 P.2d 145.

Edith's actions have been a drain on the parties' resources throughout their marriage. Dr. Liebrand testified he contributed \$40,000 from his savings to help fund Edith's custody fight over her son from her previous marriage, and his parents contributed another \$70,000 to \$80,000. RP 210. In 1997, Fred took out a mortgage on the Stateline Road property to help Edith with her new business. RP 224; EX 8. That business failed and Dr. Liebrand and Edith had to declare bankruptcy. RP 213. In 2000, Dr. Liebrand sold his family farm in Oklahoma for \$250,000 to pay debts of Edith's business. RP 214; RP 318-19; EX 20. Dr. Liebrand incurred a

federal tax lien because of that business bankruptcy. RP 221; RP 314; EX 16. Dr. Liebrand lost his credit card in the bankruptcy. RP 273. Edith damaged their Toyota Camry. RP 321. Edith ran the Camry into Dr. Liebrand's truck. RP 359. In 2012, Edith's spending increased dramatically and despite his efforts, Dr. Liebrand could not repay all of it. RP 276-77. Dr. Liebrand and Edith sent thousands of dollars to support Edith's mother in France. RP 279. All the foregoing evidence was presented at trial. Nothing in the record suggests the trial court considered any of it.

Dr. Liebrand also testified at trial the maximum amount he can contribute toward his retirement is two and one-half percent of pre-tax earnings, with an equal contribution by his employer. RP 380. In contrast, twenty percent of gross salary is placed into her retirement. RP 381. Twenty percent of Edith's gross salary is paid into her retirement every pay period. RP 165. Edith thus has the ability to accumulate four times as much of her earnings into her retirement as can Dr. Liebrand.

In making its distribution of the parties' property, RCW 26.09.080 requires the trial court to consider all relevant factors. Edith's negatively productive conduct outlined above and the comparative rates at which the parties accumulate funds in their retirement accounts are clearly relevant factors for the court to consider. Nothing in the record suggests the trial court considered those factors.

The parties' relative health, age, education and employability are also considered. *Marriage of Mathews*, 70 Wn. App. 116, 121, 853 P. 2d 462, review denied, 122 Wash.2d 1021, 863 P.2d 1353 (1993). Dr. Liebrand has serious health concerns. Dr. Liebrand's sight in his right eye started to strongly deteriorate in the seven months preceding trial. RP 208. Dr. Liebrand continues to undergo chelation therapy to address his toxicity with mercury and lead. RP 208-09. Dr. Liebrand's tenure as a college professor is in jeopardy due to his absence for hearings related to this divorce action. RP 207; RP 316-17; EX 18. Again, nothing in the record suggests the trial court considered those factors.

Therefore, the Court should reverse paragraphs 7, 8, 9 and paragraph 2 of Separate Property in Exhibit A thereto, and Findings of Fact 8, 10 and paragraph 2 of Separate Property in Exhibit A thereto and remand the case for a redistribution of the parties' retirement accounts after a full consideration of all relevant factors.

E. The trial court erred in awarding spousal support for respondent.

Error is assigned to paragraph 13 of the Final Divorce Order and the Spousal Maintenance paragraph in Exhibit A thereto. CP 986, CP 989; App. 1. Error is assigned to Finding of Fact 13 and the Spousal Maintenance paragraph in Exhibit A thereto. CP 908, CP 983; App. 2. The trial court awarded Edith spousal support for \$2,000 per month for 60 months. *Ibid.*

The trial court must make findings of fact to establish whether the factors in RCW 26.09.090 were considered, and, if so, upon what facts the court based its conclusions. *Marriage of Monkowski*, 17 Wn. App. 816, 819, 565 P. 2d 1210 (1977). Here, the trial court's findings do not whether it considered the factors in RCW 26.09.090. Nor do the findings state upon which facts the court based its conclusions. As in *Monkowski*, remand for entry of adequate findings is required.

In making its award of 60 months of maintenance, the trial court was required to, but failed, to enter an express finding as to whether that was an appropriate length of time in view of the disparate earnings of the parties. *In re: Marriage of Estes*, 84 Wn. App. 586, 594, 929 P. 2d 500 (1997). Therefore, the case should be remanded to the trial court for such a finding.

In making its award of 60 months of maintenance, the trial court failed to take into consideration whether Dr. Liebrand will either be terminated from employment at Walla Walla University or retire within that time. If Dr. Liebrand retires within that 60 months, under the Final Divorce Order, his retirement will be reduced by the \$53,750 amount awarded to Edith from his 403 (B) account. In *Marriage of Mathews*, the court viewed the effect of requiring the obligor spouse to pay maintenance out of his remaining retirement as plain error. 70 Wn. App. 124-25. While *Mathews* involved permanent maintenance, the 60-month term here presents no less

of a problem to Dr. Liebrand, who faces the real possibility of having to pay \$2,000 per month maintenance out of his diminished retirement account. Thus, the error here is the same as in *Mathews*.

Notwithstanding the prohibition in RCW 26.09.090 against considering misconduct in awarding maintenance, Washington courts have considered a spouse's dissipation of community assets in awarding maintenance. *Marriage of Mathews*, 70 Wn. App. 124; *Marriage of Morrow*, 53 Wn. App. 579, 584, 770 P. 2d 197 (1989). As set forth in paragraph D, *supra*, Edith's "negatively productive" conduct over the course of the parties' marriage has resulted in the loss to their community of hundreds of thousands of dollars. Such conduct militates against the trial court's award of \$2,000 per month for 60 months.

RCW 26.09.090 (1) (a) requires the court to consider, *inter alia*, the ability of the party seeking maintenance to meet his or her needs independently. Edith holds bachelor's degrees from Purdue University in French literature and English. RP 102-03. Edith holds a master's degree from Purdue in French literature. RP 103. Edith is employed as an adjunct professor at Walla Walla Community College. EP 108. Edith has held the position of adjunct professor since 2003. RP 108. As an adjunct professor, Edith is not tenured. RP 107. RP 107. Edith teaches a maximum of three classes per quarter. RP 107-08.

The market in Walla Walla for Edith's skills is limited. Whitman College hires only people with PhD's. RP 111. Edith does not have a PhD. RP 111. Edith would also be an adjunct professor at Walla Walla University. RP 112. Edith is not inclined to work outside Walla Walla. RP 112. Edith has not applied for work outside Walla Walla. RP 144. Edith has not applied for work in Seattle. RP 145.

Edith earned \$32,500 over the 12 months preceding trial in this case. RP 116. Edith does not get paid as a professor during the summer. RP 117. Edith gets nominal work as an instructor during the summer. RP 118-19. Edith taught one class in the summer of 2017. RP 144.

Edith demonstrates no initiative to move herself beyond her work as a part-time adjunct community college professor in a small town earning \$32,000 per year, despite her excellent academic credentials and a history of teaching at the college level. Instead of improving her lot in life, Edith has chosen to have the trial court extract a subsidy from Dr. Liebrand for her lifestyle. Given Edith's capacity for self-support, her request for maintenance should have been denied. *Marriage of Wright*, 78 Wn. App. 230, 238, 896 P. 2d 735 (1995).

Alternatively, remand is an appropriate remedy when the trial court does not adequately consider relevant factors concerning spousal support. *Marriage of Sheffer*, 60 Wn. App. 51, 57-58, 802 P. 2d 817 (1990). Therefore, the court should reverse paragraph 13 of the Final Divorce

Order and the Spousal Maintenance paragraph in Exhibit A thereto and Finding of Fact 13 and the Spousal Maintenance paragraph in Exhibit A thereto and remand the case for consideration of the above discussed factors.

F. The trial court erred in awarding attorney fees to Edith.

Error is assigned to Paragraphs 6, 14, and the Attorney's Fees Paragraph in Exhibit A thereto. CP 985, CP 986, CP 989. App. 1. Error is assigned to Finding 14 and the Attorney's Fees Paragraph in Exhibit A thereto. CP 980, CP 983. App. 2.

The Court of Appeals reviews a trial court's decision to grant or deny a statutory attorney fee award for abuse of discretion. *In re Marriage of Swaka*, 179 Wn. App. 549, 319 P. 3d 69 (2014). “[T]rial courts must exercise their discretion on articulable grounds, making an adequate record so the appellate court can review a fee award.” *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 415, 157 P.3d 431 (2007). Therefore, the trial court must enter findings of fact and conclusions of law to support an attorney fee award. *In re Marriage of Swaka*, 179 Wn. App. ___. “[A]bsence of an adequate record upon which to review a fee award will result in a remand of the award to the trial court to develop such a record.” *Mahler v. Szucs*, 135 Wash.2d 398, 435, 957 P.2d 632(1998), overruled in part on other grounds by *Matsyuk v. State Farm Fire & Cas. Co.*, 173 Wash.2d 643, 272 P.3d 802 (2012).

Here, the trial court found the amount of attorney fees ordered was reasonable. CP 980. But there is no indication the trial court actively and independently confronted the question of what a reasonable fee was either before or after Edith's counsel's fee declaration was filed. Therefore, it does not appear the trial court meaningfully reviewed the basis of the calculation of Edith's attorney fees. The trial court simply accepted Edith's requested attorney fees before considering her attorney's documentation of the work performed.

The inadequacy of meaningful review given by the trial court to Edith's attorney fee request is also revealed in its oral ruling:

With reference to attorney fees, I am not mistaken, \$10,000 have already been paid to Mrs. Liebrand. And approximately based on that and the documentation of what Mr. Mitchell had, \$33,805 will be paid to Mrs. Liebrand for attorney fees.

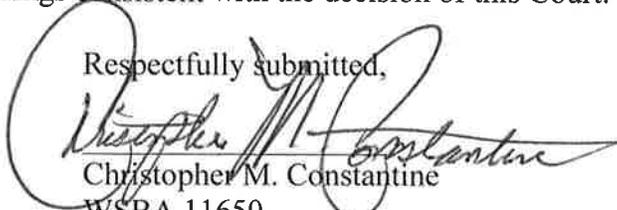
RP 493.

Therefore, the trial court's award of attorney fees should be reversed, and the case remanded to the trial court for entry of adequate findings of fact and conclusions of law supporting its attorney fee award. *Svendsen v. Stock*, 143 Wn. 2d 546, 560, 23 P. 3d 455 (2001).

VII. CONCLUSION

The trial court's findings of fact and conclusions of law and its order challenged above should be reversed and the case remanded to the trial court for further proceedings consistent with the decision of this Court.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christopher M. Constantine", is written over a horizontal line. The signature is fluid and somewhat stylized, with a large initial "C" and "M".

Christopher M. Constantine

WSBA 11650

Of Attorneys for Appellant

VIII. APPENDICES

1. Findings of Fact and Conclusions of Law, *In re the Marriage of Liebrand*, Walla Walla Superior Court No. 15-3-00235-4
2. Final Divorce Order, *In re the Marriage of Liebrand*, Walla Walla Superior Court No. 15-3-00235-4
3. Order Denying Reconsideration, *In re the Marriage of Liebrand*, Walla Walla Superior Court No. 15-3-00235-4

2017 JUN - 28 1:05
SCOTT MARTIN
CLERK
COUNTY

Superior Court of Washington, County of Walla Walla

In re the marriage of:

Petitioner:

Edith Liebrand

And Respondent:

Frederic D. Liebrand

No. 15-3-00235-4

Findings and Conclusions about a Marriage
(FNFCL)

Findings and Conclusions about a Marriage

1. Basis for findings and conclusions:

Trial on June 27 and June 28, 2017 where the following people were present and testified:

Petitioner

Respondent/ Personal Representative of the Estate of Esther Liebrand intervenor

Other (name and relationship to this case): Thomas Sawatzki/expert

Other (name and relationship to this case): Scott Martin/expert

Other (name and relationship to this case): Kate Pederson

The Court makes the following findings of fact and conclusions of law:

2. Notice

The Respondent has appeared in this case, or has responded to or joined the *Petition*.

3. Jurisdiction over the marriage and the spouses

At the time the *Petition* was filed, both parties lived in Washington State.

Conclusion: The court has jurisdiction over the marriage.

4. Information about the marriage

The spouses were married on December 17, 1991 at Santa. Barbara, California.

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2 **5. Separation Date**

3 The marital community ended on September 9, 2015. The parties stopped acquiring
4 community property and incurring community debt on this date.

5 **6. Status of the marriage**

6 **Divorce** – This marriage is irretrievably broken, and it has been 90 days or longer since
7 the *Petition* was filed and the *Summons* was served or the Respondent joined the *Petition*.

8 **Conclusion:** The Petition for divorce, legal separation or invalidity (annulment) should be
9 approved.

10 **7. Separation Contract**

11 There is no separation contract.

12 **Conclusion:** There is no separation contract.

13 **8. Real Property (land or home)**

14 The spouses' real property is listed in Exhibit A. This Exhibit is attached and made part of
15 these Findings.

16 **Conclusion:** The division of real property described in the final order is fair (just and
17 equitable).

18 **9. Community Personal Property (possessions, assets or business interests of any kind)**

19 The spouses' community personal property is listed in Exhibit A. This Exhibit is attached
20 and made part of these Findings.

21 **Conclusion:** The division of community personal property described in the final order is
22 fair (just and equitable).

23 **10. Separate Personal Property (possessions, assets or business interests of any kind)**

24 The **Petitioner's** separate personal property is listed in Exhibit A. This Exhibit is
25 attached and made part of these Findings.

26 The **Respondent's** separate personal property is listed in Exhibit A This Exhibit is
27 attached and made part of these Findings.

28 **Conclusion:** The division of separate personal property described in the final order is fair
(just and equitable).

11. Community Debt

The spouses' community debt is listed in Exhibit A. This Exhibit is attached and made part
of these Findings.

Conclusion: The division of community debt described in the final order is fair (just and
equitable).

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2 **12. Separate Debt**

3 Neither spouse has separate debt.

4 **13. Spousal Support (maintenance/alimony)**

5 Spousal support was requested.

6 **Conclusion:** Spousal support should be ordered because of the length of the marriage
7 and the disparity in income between the parties as well as the court's intent
8 to use maintenance as a part of the overall division of assets.

8 **14. Fees and Costs**

9 The Petitioner incurred fees and costs, and needs help to pay those fees and costs. The
10 other spouse has the ability to help pay fees and costs and should be ordered to pay the
11 amount as listed in the final order. The court finds that the amount ordered is reasonable.

12 **15. Protection Order**

13 No one requested an *Order for Protection* in this case.

14 **Conclusion:** No one has requested an Order for Protection.

15 **16. Restraining Order**

16 No one requested a *Restraining Order* in this case.

17 **Conclusion:** No one requested a Restraining Order.

18 **17. Pregnancy**

19 Neither spouse is pregnant.

20 **Conclusion:** Neither spouse is pregnant.

21 **Note:** The law considers the other spouse to be the parent of any child born during the marriage or
22 within 300 days after it ends. If the other spouse is not the parent, either spouse may file a *Petition to*
23 *Disprove Parentage of Presumed Parent* (FL Parentage 355) in court. In most cases, the deadline to file
24 the *Petition to Disprove* is before the child turns four. (See RCW 26.26.116, 26.26.500 – 26.26.625.)
25 If everyone agrees, both spouses and the child's biological father can sign an *Acknowledgment (and*
26 *Denial) of Paternity*. Those forms must be notarized and filed with the Washington State Registrar of
27 Vital Statistics to be valid.

26 **18. Children of the marriage**

27 The spouses have no children together who are still dependent.

28 **19. Jurisdiction over the children (RCW 26.27.201 – .221, .231, .261, .271)**

Does not apply. The spouses have no children together who are still dependent.

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20. Parenting Plan

The spouses have no children together who are still dependent.

21. Child Support

The spouses have no children together who are still dependent.

22. Other findings or conclusions (if any)

Does not apply.

8-7-17 Mr. Scott Wilson
Date Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below.

This document:
is presented by me

MS
MICHAEL S. MITCHELL, WSBA #8678
Attorney for Petitioner

This document:
may be signed by the court without notice to me

AK
ARTHUR KLYM, WSBA #7839
Attorney for Respondent

EXHIBIT A

LIEBRAND DISSOLUTION WALLA WALLA COUNTY CAUSE NUMBER 15-3-00235-4 COURT'S DIVISION OF ASSETS AND DEBTS

Community Assets:

1. The court finds that the real property located at 1776 Stateline Road is a community asset and is valued at \$470,000. There is no debt against this asset. This property shall be awarded to the Respondent.
2. The court finds that the Seattle townhome located at 1127 A 18th Avenue, Seattle, Washington 98122 is a community asset and is valued at \$600,000. This property shall be awarded to the Petitioner. There is an approximate remaining mortgage against this property in the amount of \$190,463. Each party shall be responsible for one half of the amount of said debt (\$95,231.50 each). Respondent shall pay his share of this mortgage directly to the Petitioner within six months from the date of entry of this Decree or a Judgment will be entered against him in that amount. It is the court's intent that payment shall come from trust assets to which the Respondent has access, provided, Respondent may make payment from any source.
3. The amount held in attorney Hood's/Klym's trust account (which the court characterizes as community property) from the rental proceeds from the Seattle townhome shall be awarded to Petitioner.
4. The Cabo San Lucas Timeshare which the court finds is community property shall be awarded to the Respondent.
5. Each party will keep the furniture they each have in their possession. Respondent is awarded the Alaska Airline flyer miles consisting of approximately 500,000 miles. Respondent shall also be awarded all interest in the Walla Walla Free Solar Business provided that he is ordered to pay to the Petitioner her one half of those anticipated distributions (her one half being \$2500 per year) for the years 2016 through 2020 (total payments \$12,500 to Petitioner)
6. Retirement- the court finds that each party's retirement is community property. The respective retirement amounts shall be divided as follows:
 - a. Respondent's Adventist 403 (B) will be divided so that Respondent receives \$91,000 from said account and Petitioner receives \$53,750 from said account.
 - b. Respondent's Traditional IRA in the amount of \$66,841 is awarded to Respondent.
 - c. Petitioner's Traditional IRA in the amount of \$74,194 is awarded to the Petitioner.

- d. Petitioner's TIAA/CREF account in the amount of \$40,788, is awarded to the Petitioner.

Separate Property:

1. Petitioner has no separate property.
2. Respondent's separate property consisting of those probate assets from the Esther Liebrand Estate totaling approximately \$916,237 are awarded to Respondent. In addition, all trust assets from the Clair Liebrand and/or Esther Liebrand trust are awarded to the Respondent.

Division of Community Debts:

1. Mortgage on the Seattle townhome will be divided as set forth above.
2. IRS lien in the amount of approximately \$2,000 shall be paid by the Respondent.

Spousal Maintenance:

Respondent shall pay spousal maintenance to the Petitioner in the amount of \$2,000 per month for a period of 60 months commencing July 1, 2017 and ending June 30, 2022. Respondent may make payment in two equal installments on the 5th and 20th of each month. Payment shall be made by direct deposit to a bank account identified by Petitioner.

Attorney's Fees:

Petitioner is awarded additional attorney fees in the amount of \$33,805 payable by the Respondent. Respondent shall pay these fees within 30 days from the date of entry of this Decree or a Judgment will be entered against him with an interest rate of 12% per annum.

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FILED

AUG 08 2017

Superior Court of Washington, County of Walla Walla

WALLA WALLA COUNTY CLERK

In re the marriage of:

No. 15-3-00235-4

Petitioner:

Final Divorce Order (Dissolution Decree) (DCD)

Edith Liebrand,

Clerk's action required: 1, 2, 6, 13, 14, 16

And Respondent:

Frederic D. Liebrand

Final Divorce Order

1. Money Judgment Summary

Does not apply.

2. Summary of Real Property Judgment (land or home)

Summarize any real property judgment from section 7 in the table below.

Grantor's name (person giving property)	Grantee's name (person getting property)	Real Property (fill in at least one)	
		Assessor's property tax parcel or account number:	Legal description of property awarded (lot/block/plat/section, township, range, county, state)
Edith Liebrand	Frederic Liebrand		
Estate of Esther Liebrand	Edith Liebrand	723460-0900-01	<p>Parcel A: Lot C, City of Seattle Short Plat No. 3007179, recorded under Recording No. 20071129900005, records of King County, Washington.</p> <p>Parcel B: An easement for ingress, egress and utilities as delineated in said Short Plat.</p> <p>Both situate in the County of King, State of Washington.</p>

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Lawyer (name): Michael S. Mitchell		represents (name): Edith Liebrand	
Lawyer (name): Arthur D. Klym		represents (name): Frederic Liebrand and Estate of Esther Liebrand	

The court has made Findings and Conclusions in this case and now Orders:

3. Marriage

This marriage is dissolved. The Petitioner and Respondent are divorced.

4. Name Changes

Neither spouse asked to change his/her name.

5. Separation Contract

There is no enforceable separation contract.

6. Money Judgment (summarized in section 1 above)

Any money judgment is set forth in Exhibit A, attached hereto and incorporated by reference herein.

7. Real Property (land or home) (summarized in section 2 above)

The real property is divided as listed in Exhibit A. This Exhibit is attached and made part of this Order.

8. Petitioner's Personal Property (possessions, assets or business interests of any kind)

The personal property listed in Exhibit A is given to Petitioner as his/her separate property. This Exhibit is attached and made part of this Order.

9. Respondent's Personal Property (possessions, assets or business interests of any kind)

The personal property listed in Exhibit A is given to Respondent as his/her separate property. This Exhibit is attached and made part of this Order.

10. Petitioner's Debt

The Petitioner must pay all debts s/he has incurred (made) since the date of separation, unless the court makes a different order about a specific debt below. (Check one):

The Petitioner must pay the debts listed in Exhibit A. This Exhibit is attached and made part of this Order.

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2 **11. Respondent's Debt**

3 The Respondent must pay all debts s/he has incurred (taken on) since the date of separation,
4 unless the court makes a different order about a specific debt below. (Check one):

5 The Respondent must pay the debts listed in Exhibit A. This Exhibit is attached and made
6 part of this Order.

7 **12. Debt Collection (hold harmless)**

8 If one spouse fails to pay a debt as ordered above and the creditor tries to collect the debt
9 from the other spouse, the spouse who was ordered to pay the debt must hold the other
10 spouse harmless from any collection action about the debt. This includes reimbursing the
11 other spouse for any of the debt he/she paid and for attorney fees or costs related to
12 defending against the collection action.

13 **13. Spousal Support (maintenance/alimony)**

14 The Respondent must pay spousal support as follows:

Amount: \$2,000 each month	Start date: <u>July 1, 2017</u> Date 1 st payment is due	Payment schedule: <u>One half on the 5th and one half on the 20th each month.</u> Day(s) of the month each payment is due (for example, "the 5 th ," "weekly," or "half on the 1 st and half on the 15 th ")
Termination: Spousal support will end when either spouse dies, or the spouse receiving support gets married or registers a new domestic partnership unless a different date or event is provided below: Date: June 30, 2022		
Make all payments to (check one): By direct deposit/transfer to a bank account identified by the receiving party.		

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18 **14. Fees and Costs (Summarize any money judgment in section 1 above.)**

19 The court orders a money judgment for fees and costs as follows:

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Judgment for	Debtor's name (person who must pay money)	Creditor's name (person who must be paid)	Amount	Interest
lawyer fees	Frederic Liebrand	Edith Liebrand	\$33,805	\$0.00

22 The Interest rate is 12% unless another amount is listed below.

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24 **15. Protection Order**

25 No one requested an Order for Protection.

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27 **16. Restraining Order**

28 No one requested a Restraining Order.

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17. Children of the marriage

The spouses have **no** children together who are still dependent.

18. Parenting Plan

Does not apply. The spouses have no dependent children together, or the court does not have jurisdiction over the children.

19. Child Support

Does not apply. The spouses have no dependent children together, or the court does not have jurisdiction over child support.

20. Other Orders (if any):

Does not apply.

Ordered.

M. SCOTT WOLFRAM



Date

AUG 08 2007

Judge or Commissioner

Petitioner and Respondent or their lawyers fill out below.

This document (check any that apply):
is presented by me

This document (check any that apply):
is approved by


MICHAEL S. MITCHELL, WSBA #8678
Attorney for Petitioner

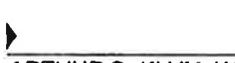

ARTHUR D. KLYM, WSBA #7839
Attorney for Respondent and
The Estate of Esther Liebrand, Intervenor Party

EXHIBIT A

LIEBRAND DISSOLUTION WALLA WALLA COUNTY CAUSE NUMBER 15-3-00235-4 COURT'S DIVISION OF ASSETS AND DEBTS

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2. The court finds that the Seattle townhome located at 1127 A 18th Avenue, Seattle, Washington 98122 is a community asset and is valued at \$600,000. This property shall be awarded to the Petitioner. There is an approximate remaining mortgage against this property in the amount of \$190,463. Each party shall be responsible for one half of the amount of said debt (\$95,231.50 each). Respondent shall pay his share of this mortgage directly to the Petitioner within six months from the date of entry of this Decree or a Judgment will be entered against him in that amount. It is the court's intent that payment shall come from trust assets to which the Respondent has access, provided, Respondent may make payment from any source.
3. The amount held in attorney Hood's/Klym's trust account (which the court characterizes as community property) from the rental proceeds from the Seattle townhome shall be awarded to Petitioner.
4. The Cabo San Lucas Timeshare which the court finds is community property shall be awarded to the Respondent.
5. Each party will keep the furniture they each have in their possession. Respondent is awarded the Alaska Airline flyer miles consisting of approximately 500,000 miles. Respondent shall also be awarded all interest in the Walla Walla Free Solar Business provided that he is ordered to pay to the Petitioner her one half of those anticipated distributions (her one half being \$2500 per year) for the years 2016 through 2020 (total payments \$12,500 to Petitioner)
6. Retirement- the court finds that each party's retirement is community property. The respective retirement amounts shall be divided as follows:
 - a. Respondent's Adventist 403 (B) will be divided so that Respondent receives \$91,000 from said account and Petitioner receives \$53,750 from said account.
 - b. Respondent's Traditional IRA in the amount of \$66,841 is awarded to Respondent.
 - c. Petitioner's Traditional IRA in the amount of \$74,194 is awarded to the Petitioner.

- d. Petitioner's TIAA/CREF account in the amount of \$40,788, is awarded to the Petitioner.

Separate Property:

1. Petitioner has no separate property.
2. Respondent's separate property consisting of those probate assets from the Esther Liebrand Estate totaling approximately \$916,237 are awarded to Respondent. In addition, all trust assets from the Clair Liebrand and/or Esther Liebrand trust are awarded to the Respondent.

Division of Community Debts:

1. Mortgage on the Seattle townhome will be divided as set forth above.
2. IRS lien in the amount of approximately \$2,000 shall be paid by the Respondent.

Spousal Maintenance:

Respondent shall pay spousal maintenance to the Petitioner in the amount of \$2,000 per month for a period of 60 months commencing July 1, 2017 and ending June 30, 2022. Respondent may make payment in two equal installments on the 5th and 20th of each month. Payment shall be made by direct deposit to a bank account identified by Petitioner.

Attorney's Fees:

Petitioner is awarded additional attorney fees in the amount of \$33,805 payable by the Respondent. Respondent shall pay these fees within 30 days from the date of entry of this Decree or a Judgment will be entered against him with an interest rate of 12% per annum.

FILED

AUG 23 2017

KATHY MARTIN
WALLA WALLA COUNTY CLERK

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8 **Superior Court of Washington**
9 **County of Walla Walla**

10 In re the Marriage of:

11 **EDITH LIEBRAND,**

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13 Petitioner,

14 and

15 **FREDERIC D. LIEBRAND,**

16 Respondent.

No. 15-3-00235-4

**Order Denying Motion
for Reconsideration**

17 THIS MATTER having come on regularly before the above entitled court upon the
18 Respondent's Motion for Reconsideration, the court having considered the Motion, the
19 Declarations of Respondent and Scott Martin, and having issued a letter ruling of August 8,
20 2017 (a copy of which letter ruling is attached and incorporated by reference herein) and the
21 court being fully advised, now, therefore, it is hereby
22

23 ORDERED, ADJUDGED and DECREED that the Respondent's Motion for
24 Reconsideration is hereby denied.
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Order Denying Motion for Reconsideration
Page 1 of 2

MICHAEL S. MITCHELL
Attorney at Law
129 West Main Street
Walla Walla, WA 99362-2817
TELEPHONE: (509) 529-4110 • FAX: (509) 529-6108

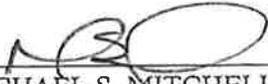
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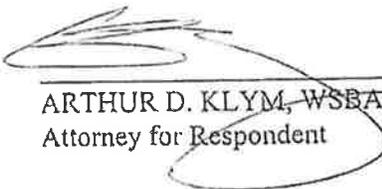
Dated: AUG 23 2017

 M. SCOTT WOLFRAM
Judge

Presented by:

A signature below is actual notice of this order.
Approved for Entry:
Notice for presentation waived:


MICHAEL S. MITCHELL, WSBA #8678
Attorney for Petitioner


ARTHUR D. KLYM, WSBA #7839
Attorney for Respondent

IX. CERTIFICATE OF SERVICE

The undersigned does hereby certify that on March 21, 2018, he served a copy of the Amended Brief of Appellant upon Respondent, by delivering the same through the Washington Appellate Court’s e-filing portal, addressed to the following:

Michael S. Mitchell Attorney at law 129 West Main Walla Walla, WA 99362-2817	<input checked="" type="checkbox"/> Via Washington Courts Appellate Portal (e-Filing Portal).
Catherine W. Smith Valerie A. Villain email. Smith Goodfriend, P.S. 1619 8th Avenue N. Seattle, WA 98109	<input checked="" type="checkbox"/> Via Washington Courts Appellate Portal (e-Filing Portal).
Clerk Washington State Court of Appeals, Division III 500 N. Cedar Street Spokane, WA 99201-1905	<input checked="" type="checkbox"/> Via Washington Courts Appellate Portal (e-Filing Portal).
Bridie M. Hood Monahan and Hood 30 West Main Street, Suite 203 P. O. Box 1815 Walla Walla, WA. 99362-0034	<input checked="" type="checkbox"/> Via Washington Courts Appellate Portal (e-Filing Portal).

Dated this 21st day of March 2018, at Tacoma, WA.



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