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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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

In re the Marriage of:

LINDA MITROVICH, Respondent

and

SVETISLAV MITROVICH, Appellant

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**NO. 36474-7-III**

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**RESPONDENT'S BRIEF**

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## **I. THE COURT DID NOT COMMIT ERROR**

SVETISLAV MITROVICH appeals the Court's Order re Motions for Reconsideration and noted findings and argues the Trial Court erred by making Amended Findings and Conclusions about the Marriage, specifically in (a) its finding the date of separation to be June 16, 2016; (b) the value attributed to gross and net community estate and transfer payment, of \$91,992 less offsets (c) finding the Wife's inheritance from her mother and certain personal injury settlement was the Wife's separate property; (d) failure to include the Wife's separate property in the final distribution and award him a portion thereof; and (e) finding Mr. Mitrovich intransigent and awarding her \$10,000.00 attorney's fees for his intransigence without properly noting the basis for his intransigence.

Following trial, the trial court rendered its written Memorandum Decision [CP441-456] and set a presentment hearing. At the presentment hearing, the Court's original Findings of Fact and Conclusions of Law and Decree were entered September 7, 2018 [CP 602-607, 608-620]. Thereafter, a motion for reconsideration was filed by each party. The Court's Order re Motion for Reconsideration was entered [CP 667-670] The Court specifically found the transfer payment to be \$91,992 and set the matter for presentment for November 9, 2018. On November 9, 2018, the Court entered its Amended Findings of Fact and Conclusions of Law and

Decree of Dissolution. [CP 671-676, 677-681] The Court directed Mrs. Mitrovich be reimbursed for auto insurance paid by her for Mr. Mitrovich's benefit of \$933.84 and reduced the transfer payment by \$10,000 awarded to Mrs. Mitrovich for Mr. Mitrovich's intransigence for multiple hearings due to his failure to comply with discovery requests and untenable legal theories. [CP 448]

At that time, Mr. Mitrovich accepted the full property division and payment by Mrs. Mitrovich of \$81,058.16 but failed to mention this in his brief. He also failed to provide as part of the Clerk's Papers his Acknowledgement of Receipt of the funds awarded to him by the Court on November 9, 2018. [CP 700-701]

LINDA MITROVICH maintains that the trial court's decision is in fact supported by the evidence, and was fair and equitable. She maintains the court considered all the facts as it weighed the same when looking at RCW 26.09.080, and RCW 26.09.140 and case law. She further believes the court's findings is supported by the record and within its discretionary power and authority.

Mrs. Mitrovich, moves for an Order awarding her attorney's fees and costs on this appeal, RAP 18.1. She points out that Mr. Mitrovich's intransigence has carried over as he has filed post-trial motions which

reflect his intransigence. The court hearing such motion reserved attorney's fees for this court to address.

## **II. APPLICABLE RULES.**

### **A. Content of the Record:**

“The record on appeal is divided into three parts: (1) the report of proceedings, (2) the clerk's papers, and (3) the exhibits. RAP 9.1. The report of proceedings is comprised of either a verbatim transcript of what occurred at trial, a narrative summary of what occurred, or the parties' agreed report of what occurred. RAP 9.2, 9.3 and 9.4. A combination of two or more types of reports is possible. ...The clerk's papers are comprised of those selected pleadings, court orders, factual findings, jury instructions and other papers filed with the trial court and necessary to a determination of the issues on review. The exhibits are those selected exhibits admitted into evidence at trial and necessary to a determination of the issues on review. §15.2 *Washington Appellate Practice Desk book*, Vol. II (1998). Under § 15.3 (2) RAP 9.6 (a) provides that the Appellant should file a designation of clerk's papers with the trial court clerk within 15 days after filing a notice of appeal. The designation must also be filed with the Court of Appeals. Exhibits should also be included in this designation. RAP 9.7(b) and 9.8 (b) directs the clerk of the trial court to

forward exhibits at the expense of the requesting party. Such rules also allows the Respondent to supplement the record on appeal.

In the case at bar, Appellant failed to request any exhibits to be provided to the Court of Appeals for review. Likewise, he failed to include the transcript of the hearing on his post-trial motion filed to set the record, in which he unsuccessfully argued that the trial Judge made comments which did not appear on the record. [CP 702-707]

This is critical as an Appellate Court may decline to give credence to arguments or assertions that are unsupported by the record. Multicare Health Systems v DSHS, 173 Wn. App. 289 (2013).

**B. Standard of Review-Failure to Assign Error:**

Failure to assign error to a trial court's findings are verities on appeal. Moreman v Butler, 126 Wn.2d 36, 40, 891 P.2d 725 (1995). See also Bale v Allison, 173 Wn. App. 435 (2013).

**C. Standard of Review-Role of Appellate Court-Credibility of the Evidence:**

“The function of the Appellate Court is to review the action of the trial courts. Appellate Courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. Instead, they must defer to the factual findings made by the trier-of-fact....”

It is one thing for an Appellate Court to review whether sufficient evidence supports a trial court's factual determination. That is, in essence, a legal determination based on factual findings made by the trial court. In contrast, where a trial court finds that evidence is insufficient to persuade it that something occurred, an Appellate Court is simply not permitted to reweigh the evidence and come to a contrary finding. It invades the province of the trial court for an Appellate Court to find compelling that which the trial court found unpersuasive." Quinn v Cherry Lane Auto Plaza, Inc., 153 Wn. App. 710, 717, 225 P.3d 266 (2009)

An Appellate Court does not review the trial court's credibility determinations or weigh conflicting evidence. Given the strong interest in the finality of marriage dissolution proceedings, the Appellate Court will defer to the trial court and will affirm unless "no reasonable judge would have reached the same conclusion." Marriage of Rostrom, 184 Wn. App. 744, 339 P.3d 185 (2014); Marriage of Kim, 179 Wn. App. 232, 240, 317 P.3d 555, *review denied*, 180 Wn. 2d 1012 (2014).

#### **D. Standard of Review-On Appeal**

An Appellate Court reviews a trial court's findings of fact and conclusions of law to determine whether substantial evidence supports the findings, and if so, whether the findings support the trial court's conclusions of law. Scott v Trans-Sys. Inc., 148 Wn.2d 701, 707-08, 64

P.3d 1 (2003). Substantial evidence is the “quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” Sunnyside Valley Irrigation Dist. V Dickie, 149 @n.2d 873, 879, 73 P.3d 369 (2003). Appellate Courts review conclusions of law de novo, Sunnyside Valley, 149 Wn.2d at 880. “Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. Instead, they must defer to the factual findings made by the trier-of-fact”, Quinn v Cherry Lane Auto Plaza, Inc., supra.

### **III. STATEMENT OF FACTS**

The trial Court’s Memorandum Decision (CP 441-456) specifically notes the Court’s findings from the trial. The Court also entered certain findings upon completion of the trial, finding the home to be community property and the funds inherited by Mrs. Mitrovich from her mother to be her separate property. [RP 458] In both instances, the court noted each was a matter of law and/or matter of statute. Most importantly, the court noted “all assets are before the court, so the court will have information about that and can consider those, but for characterization purposes those are separate assets” (referring to the multiple accounts traced by Mrs. Mitrovich.)

The Court found that the parties were married in Spokane, WA. on April 12, 1985, and that their marriage was irretrievably broken. [CP 441] It also found both were residents of Washington. [CP 671] The Court found

**the date of separation was June 16, 2016**, the date the Wife testified he moved out of the home and to Port Townsend, WA. and returned only to retrieve personal property. [CP 441]. The court found that the parties did not live together since June 16, 2016. [CP 442, 672] and she had sole use of the home since separation. [CP 442, RP 125] These were supported by testimony of Mrs. Mitrovich [RP 51-55,125,351] Mr. Mitrovich also acknowledged these facts. [RP 378-79]. Likewise, Mr. Mitrovich acknowledged removing over \$27,081 from the joint community business account and putting it into an account solely in his name and taking these funds with him to Port Townsend where he intended to work on his boat projects. [RP 380-81]. He stopped providing Mrs. Mitrovich with any monies for support as of December, 2016. [RP 397, 54-55] The evidence clearly supports the Court's findings as to the date of marriage, date of separation, and the marriage being irretrievably broken. It does not appear Mr. Mitrovich challenges the Court's finding regarding jurisdiction. [CP 672]

**Residence.** The Court found the residence to be community property. [RP 458] The court based its findings on the deed signed by Mr. Mitrovich. The evidence presented showed the parties owned a residence at 11724 E. 33<sup>rd</sup> Ave., Spokane Valley, WA. at the time of trial. [RP 119-121] This home was initially acquired by Mr. Mitrovich. On February 21,

1986, executed a Quit Claim Deed conveying the home to the community of he and Mrs. Mitrovich and recorded the same with the Spokane County Auditor's office on February 24, 1986. [Ex. P-2, RP 121-123] The mortgage, maintenance and repairs were paid for by the community. [RP 122-124] The evidence supported the Court's finding the home was community property.

The parties had the home appraised [Ex. P-1] and agreed the value to be \$220,000. [RP 120-121, 405] There was no debt on the property as the date of separation. Mrs. Mitrovich was given temporary use of the home pending trial [CP 102-105, EX P-6]. Mrs. Mitrovich had paid the property taxes and insurance since separation. [RP 135-137]. The court found the home to have a value of \$220,000 and awarded the home to Mrs. Mitrovich. Mr. Mitrovich did not assign error to the Court's findings as to the character and value of the home, nor distribution. Accordingly, these facts are verities on appeal. *Moreman*, supra. Moreover, the court reasoned Mrs. Mitrovich had separate funds to pay what equitable interest the court found for Mr. Mitrovich.

**Mexico Property.** The Court heard testimony from Mrs. Mitrovich that she had paid \$15,000 to have a small apartment built in Mexico, which funds were given to her by her mother. [Ex. P-4, RP 126-127]. She claimed the property to be her separate property. She provided evidence that the

funds came from an Edward Jones Account. [Ex. P-19, RP 169-170] Mr. Mitrovich argued he thought the property to be a community asset but failed to offer any evidence to contradict Mrs. Mitrovich's testimony and evidence. The Court found the property to be the Wife's separate property and valued the same at \$2,000.00 as the apartment had yet to be built. [CP 443, 673] Mr. Mitrovich failed to challenge the court's findings as to the Mexico property character, value or disposition and these are verities on appeal.

**Wife's Inheritance.** Mrs. Mitrovich inherited various personal property furnishings assets including numerous bank and investment accounts on the death of her mother, Mildred Brossia.[RP 57-58] She provided the Court with her mother's Last Will, [Ex. P-17, RP 157-159], closing documents regarding the sale of her mother's home, [Ex. P-15, RP 152-156], and her mother's various bank accounts [Ex. P-16, P-18, RP 156-157] and investment accounts, including CDs payable on death or held as joint tenants, [RP 156-177]. The Court found these to be the Wife's separate property by law. [RP 458, CP 443, CP 673] The evidence clearly supports the Court's findings these inherited funds and accounts were the Wife's separate property, and the values to which she testified. Mr. Mitrovich claimed an interest believing he was entitled a portion although he was not named in Ms. Brossia's will, and he was not a beneficiary or interest owner

in any of her accounts. [RP 412-413, 429-432] The Court correctly noted these inherited assets to be the Wife's separate property. Mr. Mitrovich assigns error to the Court's findings. His claim for entitlement is untenable. He offered no evidence to support his claim these were community assets. Nor does he provide any legal basis for his claim he should be awarded a portion of such assets.

**Tort Claim/Personal Injury Settlement.** Mrs. Mitrovich was injured from a fall while at a farm in Greenbluff on July 15, 2007. [RP 177] Mrs. Mitrovich received a personal injury settlement totaling \$136,427 in 2010. [Ex. P-20] Both parties testified the settlement was for Mrs. Mitrovich's pain and suffering only and that all economic damages, including lost wages, were waived, as was any claim by Mr. Mitrovich. [RP 177-185, 413-414, 432-434] The Court found that *by law*, the settlement for pain and suffering only was Mrs. Mitrovich's separate property.

Mrs. Mitrovich testified she deposited the settlement funds in a separate account with Banner Bank, account no. 3202. [Ex. P26-27] She also testified she wrote checks from this account of more than \$30,000 to the household account and business account during 2010-2011, when the business owned by the parties did not have enough income to pay for the business or household. She claimed to having paid for repairs and improvements to the home of over \$6000.00, and the balance of the funds

were being used to pay her medical expenses and other living expenses of the community. [Ex. P-26-27, RP 186-201 Mr. Mitrovich did not assign error to the Court's findings and these are verities on appeal. At trial Mr. Mitrovich attempted to rationalize why he believed these funds should be considered community. [RP 413-414] His claim and reasoning are untenable in light of his waiver of his economic claims. [RP 432-434]. His offered basis for his claims is untenable.

Mrs. Mitrovich spent a great deal of trial time tracing these and her inherited funds, establishing she maintained her inherited funds and settlement funds separated from the community accounts and did not commingle them. Mr. Mitrovich failed to provide any evidence to contradict Mrs. Mitrovich's position, but rather argued he was upset because she kept them separate. [RP 434] The Court found Mrs. Mitrovich met her burden and adequately traced the separate property funds and the court found those assets to be her separate property. [CP 443-444, 673] Specifically, those accounts were valued at separation as:

Banner Bank #0527	\$6715	[Ex. P-29, RP 209]
Banner Bank # 9291-	\$31,972	[Ex. P-29, RP 209]
Bank of America IRA	\$ 6418	[Ex. P-22, RP 176]
The Principal Funds	\$270,559	[Ex. P-31, RP 64-65]
Edward Jones Annuity Trust	\$ 63,601.43	[Ex. P-19, 23, RP 174]

Bank of America CDs	\$2001	[Ex. P-25, RP 110]
Thrivant Insurance	\$6490	[Ex. P-30, RP 21]

The evidence supports the Court's findings these were Mrs. Mitrovich's separate property.

**Vehicles.** The Wife testified she owned a 2012 Subaru Forester which she purchased in 2011 with \$5000 from insurance proceeds to replace her damaged car and \$20,000 from her separate funds.[RP 352-353] She opined that the value of the Subaru was \$11,000 which was below the private party value noted in her Kelly Blue Book valuation [Ex. P-5, RP 128-129] She provided information that the Husband used a 1998 Toyota Tacoma Pickup purchased during the marriage, which she valued at \$3500.00, the high end of her Kelly Blue Book valuation [Ex. P-5, RP 127-128]. Mr. Mitrovich agreed the purchase of the Subaru was acquired with a mix of the insurance proceeds and funds from Mrs. Mitrovich's accounts. He provided no evidence to support his opined value of \$13,500 for the Subaru. He valued his pickup at \$2200.00, his low end of the private party range, Kelly Blue Book valuation. [Ex. P-5, RP 408-409] The court valued the Subaru at \$11,445 with 20% as community (\$2289) and \$9156 as separate property of the Wife. The court valued the pickup at \$2871 and characterized the pickup as community property. [CP 444, 673] The court's findings are supported by the evidence and within the Court's discretion.

**Business/Bank Accounts.** During the marriage, the parties operated a community business known as Northwest Map Services. The parties had a joint community account at Bank of America (#0502) referred to as the “household account”. [RP 66-67] The Business Account (# 5136) was at Banner Bank. [RP 52-58, 379] The community operated the business from 1986-2012. [RP 70-107, 390]

Both parties worked at the business but Mrs. Mitrovich received no wages. [RP 393] All earnings were maintained in Mr. Mitrovich’s name. Mr. Mitrovich testified that the business earnings were usually attributed as his earnings for Social Security purposes. [RP 394] They did not have any IRA, annuities, life insurance, retirement or pensions. Just the Social Security benefits. [RP 394, 81-83]

The evidence showed that the business account paid to finance Mr. Mitrovich’s interest in flying, planes, patents, and his boat development projects as well as copy rights. [RP 380-389, 79-107] The community did not provide for any health insurance paid for by the community business. [RP 82]

Shortly before June, 2016, the business account (Banner Bank #5136) [Ex. P-12] had a balance of \$27,082. Mr. Mitrovich opened a Banner Bank account (#6967) in his name only and transferred the complete balance from #5136 to (#6967) and moved to Port Townsend. [RP 54-56,

72-79, 380] The Court found those funds were community funds and placed them in Mr. Mitrovich's column for distribution purposes. [CP 445, CP 672-673] This tracing was done by Mrs. Mitrovich's counsel.

At the time of separation (June 16, 2016) Mrs. Mitrovich received the funds in the household account (#0502) in the sum of \$988.17. [RP 110] The Court characterized those funds as community and awarded the same to Mrs. Mitrovich. [CP 444, 672] Following separation, Mrs. Mitrovich opened two accounts, Bank of America (#3937 and #8218) [Ex. P-25] with her children. Those accounts had values of \$682 and \$1501 respectively. [RP 118-119] These were characterized as separate property and awarded to the Wife. [CP 445, 674]

There were several years where the business operated at a loss and Mrs. Mitrovich contributed significant funds from her separate assets to support the business and household. Mr. Mitrovich did not have any other assets to contribute. The business ceased operations in 2013. [RP 89-107]

Since 2013, the business continued to receive copy right fees. Mr. Mitrovich testified receiving \$400 in 2016, \$1000 in 2017, and \$20-25 for 2018. [RP 389-392] The court valued the business at zero and awarded the same to Mr. Mitrovich, including the right to receive any future copy right fees. The court found he received \$1400 which was community income received and awarded to Mr. Mitrovich. [CP 445, 446, 673-674]

All such findings were supported by the evidence and not contradicted nor challenged by Mr. Mitrovich and are verities on appeal.

**Patents/Boat Development.** The Court found that the parties paid \$1125 to register a patent in 2015. [Ex. P-11, RP 105] The Court reasoned that this was an expense paid by the community for a “concept” as testified by Mr. Mitrovich. The court awarded the patent at no value to Mr. Mitrovich. [CP 445-446] Similarly, numerous expenses were paid by the community in 2013-15 [Ex. P-11] for product development, totaling \$13,000. [RP 105-108] Mr. Mitrovich moved to Port Townsend to work on these projects and develop his concepts. The Court again reasoned that these were expenses paid by the community and to the extent those projects had any value, the court awarded the same to Mr. Mitrovich at no value. [CP 445-446, 673-674] Mr. Mitrovich does not challenge these findings.

**Personal Property.** As noted in the Court’s memorandum decision, Mrs. Mitrovich presented to the Court with very specific lists of household goods, furnishings and personal property, including appraised values, characterization and photographs with suggested distribution. [Ex. P-34] [RP 269-318] Each party received household furnishings/personal property by inheritance. [RP 57-58] Mrs. Mitrovich made no claim for any personal property received by Mr. Mitrovich. [RP 58] She requested she be awarded all personal property she inherited from her mother. [RP 58]

Although Mr. Mitrovich did not agree to everything on her list, he offered very little to contradict her proposal or to support his position. The Court adopted the 8 pages of listed property prepared by Mrs. Mitrovich's counsel, as Exhibit A, which resulted in the Husband receiving \$6554 of community household goods and the Wife \$271.00. Each was awarded their own bikes with no assigned values. [CP 446, 672-673] Again, the evidence supported the court's findings and are not challenged by Mr. Mitrovich and are verities.

**Debts.** Pursuant to the Temporary Order entered July 19, 2017, [CP 37] each party was to pay their own health, medical and auto insurance. Mrs. Mitrovich continued to pay Mr. Mitrovich's auto insurance between January, 2017 and April, 2018 for a total of \$933.84 for which she sought reimbursement. [RP 61-62, 117] The court found those to be costs Mr. Mitrovich should have paid and ordered reimbursement. [CP 446, 675] Mrs. Mitrovich also paid the property taxes and home insurance premiums. Since she resided in the home and the Temporary Order did not provide clarification as to who was obligated to pay the insurance and taxes, the court reasoned Mrs. Mitrovich should incur the costs. [CP 447, 674] The wife provides evidence of a Nordstrom Visa obligation [Ex. P-32] with a balance as of June 16, 2016 AT \$1637.26. [RP 227]. Accordingly, the Court found this to be a community debt and credited her for paying the same.

[CP 447, 674] Mr. Mitrovich does not dispute this issue and the matter is a verity on appeal.

**Other Pertinent Facts:** As evidence of the trial court weighing all of the evidence before it, the court found that Mrs. Mitrovich was 70 years of age. [RP 50] Her source of income [Ex. P-7 and P-9] was Social Security, net \$854 per month [RP 137] and dividends investment of her separate funds which produced \$1129 per month [RP 138] for a total \$1983.00. The Court pointed out that Mrs. Mitrovich has significant health issues, and pays substantial costs for copays, treatment, physical therapy, and uncovered expenses and prescriptions, averaging over \$1000 per month. [See Ex. P-9, P-39, P-41, P-42, P-43, P-44, P-45, P-46] [RP 141-148, 202-203, 219, 224-227, 236-250, 255] The Court found Mr. Mitrovich was 75 yrs. old. [RP 378] He received Social Security of \$1969 per month [Ex. R-103, RP 393-395] based largely on the income reported while operating the Northwest Map Service business (while Mrs. Mitrovich received no wages). He also received occasional payments from the copy right fees. [RP 390-394] Both parties affirmed that the community had not invested in any IRA, annuities, life insurance, retirement or pensions. [RP 394-395, 81-82] The Court found the parties monthly income was about the same. It found Mrs. Mitrovich has significant more separate property funds but also has significantly more health care expenses. Mr. Mitrovich did not assign error

to the Court's findings [CP 447-448, 674]. The Court was mindful that all property was before the court, and the court considered what was separate and community. [RP 458] It found that that considering only the community assets, a transfer payment was necessary to make an equitable distribution. [CP 447, 675] The court initially directed the Wife to pay the husband a total (emphasis ours) \$130,000, to be offset by the amount the husband owed for the auto insurance payments and attorney's fees awarded the Wife. The Court later amended this amount in its Order re Reconsideration. [CP 448, 667-670]

In reviewing the Court's net distribution [CP 447] the court noted a combined community assets of \$261,435 and debt of \$1637, for a net community estate of \$259,798. It noted Mr. Mitrovich was credited \$37,907 (15%) and Mrs. Mitrovich \$221,891 (85%) of the net community estate. The Court also pointed out that the Husband's separate assets were minimal. Accordingly, what distribution necessary for an equitable distribution would require Mrs. Mitrovich to pay Mr. Mitrovich from her separate assets, thus reducing what she would otherwise have to meet her future health needs. The Court considered **all property** before the court **and the parties' circumstances** in structuring its distribution of assets. Mr. Mitrovich assigns error to the Findings in the Amended Findings of Fact and Conclusions of Law under paragraph 22. [CP 675]

**Attorney's Fees/Intransigence.** The Court found there to be some instances of intransigence, on the part of Mr. Mitrovich, including multiple hearings due to Mr. Mitrovich's failure to comply with discovery requests and his untenable legal theories. The total fees incurred by Mrs. Mitrovich at trial was approximately \$45,000. [Ex. P-48, RP 256-266]. The court found not all were incurred due to intransigence and awarded Mrs. Mitrovich \$10,000 to be deducted from the amount owed to Mr. Mitrovich. [CP 448, 675] The payment was due to the husband within 60 days of the entry of the Decree. The original findings and decree were entered September 7, 2018. Mr. Mitrovich acknowledged receipt of the court's awarded sums on November 8, 2019. [CP 700-701]

#### **IV. ANALYSIS**

Mr. Mitrovich fails to challenge any of the facts found by the trial court in its Verbatim Report [RP 458], Memorandum Decision and Order on Reconsideration, which are incorporated by reference in the Amended Findings and Conclusions of Law concerning the values of assets, and distribution of community assets. Accordingly, unchallenged findings are deemed verities on appeal. *Moreman*, supra. Although he argues the court erred, he fails to indicate how/where the findings are unsupported by evidence. Instead, he challenges the court's characterization of certain assets (the residence and wife's inheritance) and argues the Court erred in

its distribution award to Mrs. Mitrovich the entirety of her separate property. He offers no basis for why the court should award him part of Mrs. Mitrovich's separate property.

Mr. Mitrovich also accepted the \$81,058.16 net transfer payment directed by the Court [CP 675] and failed to disclose this fact to the Court on Appeal. [CP 700-701]

**A. Standard of Review: Motion on Reconsideration:**

A trial court's order granting/denying a reconsideration motion is reviewed on appeal for a manifest abuse of discretion. *Wilcox v Lexington Eye Inst.*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005) *review denied*, 157 Wn. 2d 1022 (2006).

CR 59 (a) provides grounds for a new trial or reconsideration. On a motion of a party aggrieved, reconsideration may be granted if (9) that substantial justice has not been done. A motion for reconsideration may be granted under CR 59 (a) (9) where there is no evidence or reasonable inference from evidence to justify the decision or where the decision is contrary to law. *Worden v Smith*, 178 Wn. App. 309, 314 P.3d 1125 (2013). CR 60 (b) a party may seek relief from a final judgment, order or proceeding based on (1) mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order; or (11) any other reason justifying relief from the operation of the judgment.

In the case at bar, Mrs. Mitrovich filed for reconsideration under CR 59 (a) (9) and CR 60 (b) (1) and (11) following a request for clarification at the presentment hearing. [CP 621-628] Her motion clearly noted a discrepancy, in the calculation used by the court and noting that the trial court failed to consider that Mr. Mitrovich had already been credited \$37,907 of community property and the transfer payment should acknowledge the same. The Court's Memorandum Decision [CP at 448] states: "Considering only the community assets, a transfer payment is necessary to make an equitable distribution. The Court orders the Wife to pay the husband a total of \$130,000." having earlier calculated the net community value to be \$259,798 and awarding the wife \$221,891 (85%) and the husband \$37,907 (15%). [CP at 447] The Court's Order Re Motion for Reconsideration specifically recited "the Court reviewed the court's notes and calculations and finds an error was made by the Court and needs to be corrected; the Court intended to order the Petitioner to pay \$91,992 but included the wrong number (\$130,000) in the memorandum of opinion. That will be corrected." [CP 667] The Court granted Mrs. Mitrovich's motion. Clearly, the court recognized its own mistake and need for correction. The Court did not abuse its discretion in granting Mrs. Mitrovich's motion on reconsideration. Nor can it be said the Court's calculation is in error. Based on the Court's unchallenged

findings, the total community estate is \$261,435 of which \$223,528 was awarded to the Wife and \$37,907 to Mr. Mitrovich. The community debt was \$1637.00 which was paid by Mrs. Mitrovich. Accordingly, she received a net award of \$221,891. The total net community estate is \$259,748. In equalizing the net community estate, each party would receive \$129,899. Mr. Mitrovich had already been awarded \$37,907. When this amount is subtracted from his half of the net community estate the proper transfer payment is \$91,992, the sum the Court determined on reconsideration. There was no abuse by the Trial Court. A court is free to correct its own mistake in calculations. CR 59(a)(9) or CR 60(b) (1), (11).

The trial court found Mr. Mitrovich needed to reimburse Mrs. Mitrovich for auto insurance paid on his pickup of \$ 933.84 between January, 2017 and April, 2018. [CP 446]. The evidence supports the Court's findings. The Court also reduced the amount by \$10,000 for Mr. Mitrovich's intransigence, thus requiring a payment of \$81,058.16 which Mr. Mitrovich acknowledged receiving on November 9, 2018. [CP 700-701]

Mr. Mitrovich argues the Court's figures found in paragraph 22 of the Amended Findings of Fact and Conclusions of Law [CP 671-676] are in error and incorrect. His argument is without merit. As noted in the Court's Memorandum Decision [CP 447] and Order re Motions for

Reconsideration, [CP 667] the court explained her finding the community property received by the Wife and should be corrected and replaced with the total community estate of \$261,435 and the net \$259,798. An equal division of all community property to each party should be \$ 129,899 (one half of the net community assets). Mr. Mitrovich received \$37,907 in other personal property including his vehicle, the \$27,082 he removed prior to separation, and personal property. The correct transfer payment is \$91,992.00, which is properly reflected in the court's findings. An amendment to the Court's finding would not alter the ultimate decision the transfer payment less offsets to be \$81,058.16, which was received by Mr. Mitrovich. He did not reject the same seek to challenge or appeal prior to acceptance of the awarded funds.

Mr. Mitrovich failed to disclose to this Court that he accepted and signed an Acknowledgement and Receipt of the \$81,058.16 and executed the Quit Claim Deed of his interest in the residence to Mrs. Mitrovich November 9, 2018. [CP 700-701] Acceptance of property or maintenance payments constitute waiver of the right to appeal where the appellant fails to make a strong showing of economic necessity. *Potter v Potter*, 46 Wn.2d 526, 282 P.2d 1052 (1955); *Murray v Murray*, 38 Wn.2d 269, 229 P.2d 309 (1951). Moreover, Mr. Mitrovich continually fails to recognize he received **ALL** of the Social Security benefits generated during the

period they operated the NW Map Service business. By his own admission, they did not invest in any future income source such as life insurance, annuities, IRAs, retirement or pension, but rather spent their community income paying for his airplane and boat development projects and his patents. Meanwhile, Mrs. Mitrovich suffered from multiple health issues which she would not been able to afford but for her inheritance.

#### **B. Date of Separation**

Mr. Mitrovich assigns error the Amended Findings of Fact re the marriage. He challenges the court's findings regarding the date of separation which the Court found to be June 16, 2016, which is the date they no longer resided together. Both parties acknowledge that they no longer resided together and Mr. Mitrovich had taken \$27,082 from the business account and moved to Port Townsend. [RP 51-55, 378-380] These facts support the court's finding the parties separated on June 16, 2016. These facts were also noted when the court entered its Temporary Order pending trial. [CP 102-105]. RCW 26.09.020 (1)(c) notes the date of separation is the date on which separation occurred. Mr. Mitrovich raised this issue in his pleadings, acknowledged he moved to Port Townsend to work on his boat projects and have not resided back in the home. [RP 378-379] Throughout trial, he was given ample opportunity to address the issue but failed to do so at any time. [RP 379-458]. Mr.

Mitrovich raised the issue on reconsideration and the Court noted it accepted Mrs. Mitrovich's testimony. [CP 668] The court has discretion and the court's decision is supported by the evidence. His continued argument on this issue without legal basis supports the court's finding of intransigence.

### **C. Valuation Period:**

In order to make an equitable distribution of the marital estate, the court must consider the value of each asset. Washington State Bar Assn. Family Law Desk book, § 31.2 at 31.3 (2<sup>nd</sup> Ed. 2000 & Supp. 2012) The trial court is also given discretion as to when to value property. In valuing the property, a trial court may use the values at the date of separation or the date of trial, so long as consistent. Lucker v Lucker, 71 Wn.2d 165, 426 P.2d 981 (1967). In valuing assets in a dissolution proceeding, the trial court is not controlled by fixed standards. Rather, the court has wide discretion to consider all relevant facts and circumstances. In re the Marriage of Hay, 80 Wn.App.202, 907 P.2d 3343 (1995). A trial court does not abuse its discretion by assigning values to property within the scope of the evidence. Marriage of Soriano, 31 Wn. App. 432, 435; 643 P.2d 450 (1982).

In the case at bar, Mrs. Mitrovich maintained the date of separation was June 16, 2016. Mr. Mitrovich pled and continued to maintain

throughout these proceedings the date of separation was December 31, 2016 when he was served with dissolution papers. The Court found June 16, 2016, the date Mr. Mitrovich moved to Port Townsend. The parties did not reside together thereafter and remained separate and apart. The evidence is uncontroverted by Mr. Mitrovich. This finding is pertinent as it also provides a timeline when the court can determine values of assets. This finding is supported by the evidence. There is not abuse as to the trial court's discretion.

#### **D. Inherited Property**

Mrs. Mitrovich introduced her mother's last will and testament naming her as sole beneficiary along with a number of documents ranging from the closing documents on her mother's home sale; her mother's bank and investment accounts held jointly with Mrs. Mitrovich, IRAs and CDs, etc. As noted by the trial court, Mrs. Mitrovich traced these funds, which she kept separate. Mr. Mitrovich claimed an interest in these funds but provided no basis. [RP 429] He was not named in Mrs. Brossia's will nor as a beneficiary on any of her accounts.

Property acquired after marriage by inheritance is separate property. *Estate of Madsen v. Comm. Of Internal Revenue*, 97 Wn.2d 792, 650 P.2d 196 (1982).

An asset is separate property if acquired before marriage, acquired during marriage by gift or inheritance, acquired during the marriage with the traceable proceeds of separate property, or in the case of earnings or accumulations, acquired during permanent separation. Marriage of White, 105 Wn. App. 545, 550, 20 P.3d 481 (2001). RCW 26.16.010.

Separate property brought into the marriage will retain its separate character as long as it can be traced or identified. Marriage of Schwarz, 192 Wn. App. 180, 190, 368 P.3d 173 (2016). If community and separate funds are so commingled that they cannot be distinguished or apportioned, the entire amount is rendered community property. Marriage of Pearson-Maines, 70 Wn. App. 860, 866, 855 P.2d 1210 (1993).

The Court found all funds inherited by Mrs. Mitrovich from her mother to be her separate property *by law*. [RP 458] There was no abuse by the trial court. There was substantial evidence to support the court's findings such funds were the wife's separate property and Mrs. Mitrovich had properly traced the same. Mr. Mitrovich failed to provide any evidence or legal basis to support any claim by him. His position is untenable and supports the court's finding of intransigence.

**E. Personal Injury Damages:**

Mrs. Mitrovich received a personal injury settlement in 2010 which Mr. Mitrovich had waived any right to economic damages. Mr. Mitrovich acknowledged this was solely for Mrs. Mitrovich's pain and suffering. [RP 432-433] The court found *by law*, the settlement for pain and suffering only was Mrs. Mitrovich's separate property. [CP 443, 673]

The damages for physical injury and pain and suffering which compensates the injured spouse for the harm to her separate individuality, is separate property. Damages for continuing injury-related expenses which the injured spouse alone must pay will be her separate property. Damages for lost wages which would have been community property, or injury related expenses which the community incurred is community. Marriage of Brown, 100 Wn.2d.729, 675 P.2d 1207 (1984).

In the case at bar, the Court reviewed substantial evidentiary documentation presented by Mrs. Mitrovich, identifying what property was inherited from her mother and what property was a result of her personal injury settlement. She specifically traced the flow and usage of these funds satisfying the trial court of its separate character. Mr. Mitrovich's claims are untenable and further grounds for the court's findings of intransigence.

#### **F. Property Division**

##### **Standard of Review-Property Division/Marital Distribution**

A trial court in a dissolution proceeding has broad discretion to

make a just and equitable distribution of property and liabilities of the parties, either community or separate, considering all relevant factors, including the nature and extent of separate and community properties, duration of the marriage, and the economic circumstances of each spouse at the time the division is to become effective. RCW 26.09.080. No factor is afforded greater weight than any other. *Marriage of Kozen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985). The trial court's paramount concern is the economic condition in which the decree leaves the parties based on the factors enumerated in RCW 26.09.080. *Marriage of Williams*, 84 Wn. App. 263, 270, 927 P.2d 679 (1996) *review denied*, 131 Wn. 2d 1025 (1997). These factors are not exclusive but cumulative. The courts are directed to consider the merits of the issues raised by the parties, factors affecting present and future needs and earning capacities, the kinds of property to be distributed, and the sources through which they were acquired. *Fife v Fife*, 3 Wn. App. 726, 479 P.2d 560, *review denied* (1970). They are also directed to consider the health and ages of the parties, their prospects of future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable acquisitions and obligations, and whether the ownership of the property is attributed to the inheritance or efforts of one or both spouses.

Marriage of Olivares, 69 Wn. App. 324, at 329-330, 848 P.2d 1281 (1993).

In performing its obligation to make a just and equitable distribution of properties and liabilities in a marriage dissolution proceeding, the trial court must characterize the property before it as either community or separate. Marriage of Kile, 186 Wn. App. 864, 875, 347 P.3d 894 (2015). The appellate court reviews de novo a trial court's characterization of property as separate or community. Marriage of Mueller, 140 Wn. App. 498, 503-04, 167 P.3d 568 (2007). However, the trial court's characterization is not controlling. Marriage of Shannon, 55 Wn. App. 137, 141, 777 P.2d 8 (1989) Rather, the trial court must ensure that the final division of the property is fair, just and equitable under all the circumstances, because all of the property of the parties, whether it be community or separate, is before the trial court for disposition. Shannon, at 141, supra.

The court may distribute all property, whether categorized as community or separate. A trial court has considerable discretion in making a property division, and "will be reversed on appeal only if there is manifest abuse of discretion". Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). This occurs if the trial court's decision is manifestly unreasonable or based on untenable grounds or untenable

reasons. Marriage of Olivares, 69 Wn. App. 324, 328, supra. A trial court's factual findings are accepted if supported by substantial evidence." Marriage of Wright, 179 Wn. App. 257, 261-62, 319 P.3d 45 (2013). Evidence is substantial if it persuades a fair-minded, rational person of the truth of the finding. Marriage of Spreen, 107 Wn. App. 341, 346, 28 P.3d 769 (2001), Marriage of Thomas, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991).

Equitable division of property does not require mathematical precision, but rather fairness, based on consideration of all circumstances of the marriage. Crossetto v Crossetto, 918 P.2d 954 (1996). A property distribution need not be equal to be "just and equitable". Marriage of Nicholson, 17 Wn. App. 110, 561 P.2d 1116 (1977); Marriage of Tower, 55 Wn. App. 697, 780 P.2d 863 (1989). Property distributions need not be equal to be just and equitable. Marriage of Tower, 55 Wn. App. 697, 780 P.2d 863 (1989), *review denied*, 114 Wn.2d 1002 (1990); Marriage of Nicholson, 17 Wn. App. 110, 117, 561 P.2d 1116 (1977).

Disproportionate awards of community property, even 75/25 are within the trial court's discretion. Marriage of Davidson, 112 Wn. App. 251, 258-59, 48 P.3d 358 (2002); Marriage of Dessauer, 97 Wn.2d 831, 650 P.2d 1099 (1982).

Mr. Mitrovich argues the trial court erred in failing in (a) not mentioning the extent of separate property (page 8, Appellate's brief); and (b) failing to include the Wife's separate funds as part of the assets to be distributed. He argues that the trial court was obligated to divide all assets and it failed to follow RCW 26.09.080. In effect, he requests an award of her separate property. His argument fails to appreciate the court's consideration of all the circumstances, parties ages, health issues, need to meet those future health issues when there was no community planning for the future.

In the case at bar, the court viewed all the evidence, both separate and community, considered the sources of the funds, found that the wife's separate funds were comprised of inherited funds from her mother and her personal injury settlement. [CP 443] The court found the Wife adequately traced these funds and found these to be her sole and separate property. [CP 444, 458] The Court also noted that these funds totaled approximately \$400,000 [CP 447] although Mrs. Mitrovich testified it had been reduced by the time of trial. After considering Mr. Mitrovich's testimony regarding his belief these should be community funds, the court noted his reasons "would not alter the character of the asset". [CP 443, 458] The court noted the husband is not a named beneficiary in Ms.

Brossia's will and he is not named as an owner or having an interest of any kind in any of the financial accounts. [CP 443]

However, in addressing the Court's consideration of all property, the court found under "Net Distribution", the wife's separate assets total just over \$400,000 (using her own figures). The husband's separate assets are minimal, mainly item of personal property owned by him prior to marriage or inherited from his family. [CP 447] The court goes on to note "the court can, however, consider the extent of the separate property in making an equitable distribution". From there, the court considered the age of the wife (70 yrs.), her income and sources \$854 Social Security and \$1129 per month dividends from her investments for a total \$1983 per month. Mrs. Mitrovich provided the court with lengthy testimony and documentation substantiating her medical needs and costs. The Court found she had significant health issues, and pays substantial costs for copays, treatment, physical therapy, uncovered expenses and prescriptions, averaging over \$1000 per month. [CP 448] The husband is 75 years old, receives Social Security of \$1969 per month net, plus occasional payments from the copyright, which averages less than \$60 per month. [CP 448] The court reasoned the parties' total incomes are about the same. The wife has significant more separate assets, but also significantly more health care expenses. [CP 447-448]. Clearly, the court

considered a multitude of factors as required by RCW 26.09.080 and case law, along with the fact Mr. Mitrovich had no other liquid assets to make a transfer payment. The largest community asset was the home valued at \$220,000. On the other hand, Mrs. Mitrovich's separate assets were the only source the transfer payment of a net \$81,058.16, could be met. That same source (her separate property) was also the only assets available to meet her ongoing health care needs, which were substantial. The Court clearly considered all factors and made a just and equitable division of assets. Marriage of Muhammad, supra.

**G. Attorney's fees Award-Intransigence**

Mr. Mitrovich challenges the court's finding he acted intransigently and challenges the court's awarding Mrs. Mitrovich \$10,000 in attorney's fees. As noted in the Amended Findings of Fact and Conclusions of law, (paragraph 14) [CP 674]. Both the Court's written memorandum decision [CP 449-456] and Court's Order on Reconsideration dated November 2, 2018 [CP 667-670] were incorporated into the Amended Findings of Fact and Conclusions of Law [CP 675]. Mrs. Mitrovich incurred fees and costs of approximately \$45,000. [EX P-48, RP 263-266] She testified she had received an offer per email from Mr. Mitrovich suggesting that if she did not accept his proposal, he would make it (the divorce) expensive for her. [RP 256-257]. At the beginning of the matter, he had her

served with a set of interrogatories from his first attorney, Gloria Porter, requesting records 10-15 years back, which she didn't have. He demanded and eventually entered the home without permission, while she was in the hospital; threatened to seek some of her inheritance and personal injury money, which he has sought at trial. This caused her anxiety and she installed home security devices. She required assistance of Julie Rosenoff to assist in attempting to complete the lengthy interrogatory and request for production he had requested. She took numerous photographs so to identify the personal property at the home. Mr. Mitrovich's first access of the home without permission, resulted in his removal of things without disclosure to Mrs. Mitrovich, then requested access to the home a second time, bringing a police officer with him. He failed to inform the police officer Mrs. Mitrovich had been granted sole use of the home and contents pending final resolution. A copy of the order had to be shown to the officer to prevent his access. Later he requested photos of the contents of each drawer and closet in the home, although there was little value in any of those items. Once these photos were taken, she had to meet with counsel and establish an inventory list [EX P-47, 48; RP 256-266]. She and counsel had to respond to and bring/attend multiple motions to compel discovery and respond to multiple motions by Mr. Mitrovich. She and counsel attended mediation three (3) times, and even had to get court intervention for the appointment of

a mediator. The trial court, in its discretion, awarded \$10,000 to be paid by Mr. Mitrovich because there was clear evidence of intransigence. The court noted in her Memorandum Decision [CP 448] that there were instances, including multiple hearings due to Mr. Mitrovich's failure to comply with discovery requests, and untenable legal theories.

Mr. Mitrovich argues that findings of fact supporting why he caused Mrs. Mitrovich to incur those additional expenses are required, citing Sentinel C3, Inc. v. Hunt, 181 Wn.2d 127, 144, 331 P.3d 40 (2014). If the purported theories are findings, they must be supported by substantial evidence. Marriage of Raskob, 183 Wn. App. 503, 510, 334 P.3d 30 (2014). He further argues with respect to untenable legal theories, the court made no findings on what those theories were, how they caused delays, or how they ran up costs.

A trial court has great discretion to award attorney's fees to one of the parties in a dissolution action, and the reviewing court will not reverse unless it is clearly untenable or manifestly unreasonable. Edwards v Edwards, 83 Wn. App. 715, 924 P.2d 44, *reconsideration denied* (1996). Marriage of Tower, 55 Wn. App. 697, 780 P.2d 863 (1989)

RCW 26.09.140 Attorneys fees in dissolution actions, states:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for

the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceedings or enforcement or modification proceedings after entry of judgment...

In calculating the basis for reasonable attorney fees in a dissolution matter, the court should consider factual and legal questions involved; time necessary for preparation and presentation of the case; and the amount and character of property involved. The needs of the requesting party need to be balanced against the other party's ability to pay.

*Marriage of Van Camp*, 82 Wn. App. 339, 918 P.2d 509, review denied, 130 Wn. 2d 1019 (1996); *In re the Marriage of Campbell*, 37 Wn. App. 840, 689 P.2d 604 (1984).

Likewise, the courts have also considered the necessity of having to unravel numerous transactions to establish the community interest and the number of days of trial to justify an award of fees and costs to the other spouse. *In re the Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d. 197 (1989).

The court may consider the extent to which one spouse's intransigence caused the spouse seeking a fee award to require additional legal services. If intransigence is established, financial resources of the spouse seeking fees are irrelevant. *Crosetto v. Crosetto*, 82 Wn. App. 545,

918 P.2d 954 (1996); Marriage of Bobbitt, 139 Wn. App. 8, 30, 144 P.3d 306 (2006).

This obligation of good faith and fair dealing between parties in a marriage does not cease upon contemplation of a divorce. Seals v Seals, 22 Wn. App. 652, 590 P.2d 1301 (1979). The duties of fair dealing and good faith are gender neutral and apply to both parties in a marital setting and are applicable even in reaching a pre-nuptial agreement. In re Marriage of Mattoon, 107 Wn.2d 479, 730 P.2d 668 (1986). It continues even after a marriage is deemed irretrievably broken, a settlement has been reached, and the parties are engaged in drafting the final dissolution documentation. Marriage of Sievers, 78 Wn. App. 287, 897 P.2d 388 (1995). The breach of such obligations, and the failure to provide information which supports these duties, misrepresentation of information, or the failure to provide information necessary to assist the court in determining its findings and decision have been held to be intransigence sufficient to justify an award of attorney's fees. Sievers, supra, at page 311. Where the bad acts permeate the entire proceeding, the court does not need to separate the intransigent acts from the non-intransigent conduct. See Sievers, supra, at page 312, nor which fees are incurred as a result of intransigence and which were not. Marriage of Burrill, 113 Wn. App. 863, 873, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007 (2003).

Determining intransigence is necessarily factual, but may involve foot dragging, obstruction, filing unnecessary or frivolous motions, refusing to cooperate with the opposing party, noncompliance with discovery requests, and any other conduct that makes the proceedings unduly difficult or costly. *Marriage of Wixom*, 190, Wn. App. 719, 725, 360 P.3d 960 (2015) Intransigence includes litigious behavior, bringing excessive motions, or discovery abuses, or pursuing meritless appeals for the purpose of delay and expense. *Marriage of Wallace*, 111 Wn. App. 697, 710, 45 P.3d 1131 (2002) *review denied*, 148 Wn.2d 1011 (2003); *Gamache v Gamache*, 66 Wn.2d 822, 829-30, 409 P.2d 859 (1965).

A continued pattern of obstruction may also be determined to be intransigent behavior. *Crossetto v Crossetto*, 82 Wn. App. 545, 918 P.2d 954 (1996).

In the case at bar, the trial judge was familiar with the parties and case having heard multiple motions filed by each party. Although these parties had a long-term marriage and had operated a business during the marriage which supported their life style until about 2010, they failed to plan for their future. They had a home which Mr. Mitrovich had deeded to the community years ago, which at the time of trial was the largest community asset. They had furnishings primarily inherited from their respective parents and two vehicles. During the marriage, although both parties worked in the

business, only Mr. Mitrovich reflected an income for Social Security purposes. During the business, Mr. Mitrovich expended community funds purchasing airplanes, building prototype boats and attempting to patent these “concepts”. This continued even when the business was no longer financially viable. [RP 382-394]. The business closed in 2012. [RP 390] At separation, he removed the community funds to a personal funds and ran off to Port Townsend, WA. He left Mrs. Mitrovich with only her separate funds to meet her needs.

During the marriage, Mrs. Mitrovich suffered a personal injury and received a damages settlement for her pain and suffering. Both parties executed a waiver of any economic damages, leaving the settlement solely for Mrs. Mitrovich’s pain and suffering. During the marriage, she continued to have a multitude of health issues requiring numerous surgeries. Also during the marriage, she inherited monies from her mother, which she maintained separate and traced for the court. Mr. Mitrovich has continually sought access to those funds.

The parties separated on June 16, 2016, when Mr. Mitrovich removed the community funds in the business account, and moved to Port Townsend. He did not return to Spokane and they did not cohabit thereafter. He did not split the community funds he removed. Instead, he used the funds and stopped supporting Mrs. Mitrovich by the end of the 2016.

Meanwhile Mrs. Mitrovich used her separate property to support the community putting funds into the business and home accounts.

The Court found there were multiple motions which is reflected by the record of proceedings and clerk's papers. Mr. Mitrovich's initial discovery (seeking records 10-15 years back) was objected to and were ignored for almost nine months. [RP 257] Mrs. Mitrovich's discovery went unheeded until the court addressed it in her motion to compel which necessitated a hearing on October 29, 2017 and court intervention. [CP 200-203] A second motion to compel hearing was held on November 17, 2017, [RP 6-25] where Mrs. Mitrovich requested the passwords for the computers in the home which housed the parties' financial records. At that time, Mr. Mitrovich elected to drop his initial discovery requests which Mrs. Mitrovich, and her counsel and Ms. Rosenoff had been working on feverously for months. [RP 10]. He continually refused to provide the passwords to the computers, necessitating Mrs. Mitrovich to hire a computer expert and the assistance of Ms. Rosenoff to obtain access [RP 229]. Mr. Mitrovich failed to provide his responses with notarized signature and failed to provide the documents requested. The main documents and pictures folders were deleted, as well as many of the applications (such as Quicken). The forensic computer analyst was able to retrieve the Quicken files. Ms. Rosenoff was able to figure out the passwords to access them. Mrs.

Mitrovich's counsel sought mediation. Another hearing was required since the parties were unable to agree on a mediator and when to mediate. [RP 25-37] Ultimately, the court determined who the mediator would be. Due to Mr. Mitrovich's unwillingness to cooperate, mediation extended to three (3) meetings. Mrs. Mitrovich and counsel attempted multiple times to simply get identification of what were agreed upon facts and what were disputed facts and could only reach minimal agreement. Due to his lack of cooperation, Mrs. Mitrovich was required to have community personal property assets appraised. [RP 269-318] These constant delays and intransigent behavior was evident.

The court found Mr. Mitrovich's intransigence caused multiple hearings and his legal theories untenable. Examples of his untenable theories include: (1) Mr. Mitrovich's continued objection to the date of separation when he acknowledge he moved from the home to Port Townsend on June 16, 2016, taking all of the community funds, and did not cohabit again with Mrs. Mitrovich; (2) Mr. Mitrovich's claim the home was his separate property when he knowingly deeded the home to the community; (3) Mr. Mitrovich's claim the wife's inheritance was community when he was not named as a beneficiary in the will and not listed as an owner on any financial accounts with Mrs. Mitrovich's mother; (4) Mr. Mitrovich's claim the tort settlement proceeds was community property

when he waived any economic damage award at settlement; (5) Mr. Mitrovich's failure to provide discovery documents as requested, including passwords and values; (6) his failure to disclose funds received for copy right income until requested at trial; (7) His failure to expedite mediation through cooperation identifying, characterizing and valuing assets; (8) his claim the Mexico property was community without any supporting evidence; (9) his refusal to timely return Mrs. Mitrovich's camera and telescope; The camera has yet to be returned and telescope, a gift to Mrs. Mitrovich was ultimately given to him in lieu of the piano; (10) his argument he is entitled to 22% of the estate without any supporting legal basis; (11) his lack of cooperation in preparing and completing the joint trial management report; (12) his insistence on production of records 10-15 years back for no valid reason then when objected to by Mrs. Mitrovich's counsel, elected to waive the need for such discovery; (13) his failure to advise this court of his acceptance of the \$81,058.16 directed by the court; (14) his filing a post-trial motion to settle the record alleging the record failed to include statements from the Judge; [CP 702-707] and the Court's Order denying his motion. [CP 713-715] The Court had before it Exhibit [P-48] the Wife's Attorney's fees and costs to date of trial and had sufficient evidence to find Mr. Mitrovich acted intransigently.

## V. ATTORNEY'S FEES ON APPEAL

RAP 18.1. (a) Attorney Fees and Expenses. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided by this rule, unless a statute specifies that the request is to be directed to the trial court.

Here, Mrs. Mitrovich requests her fees and expenses as set forth in her financial declaration to be filed with the court. She further notes that she believes Mr. Mitrovich received his transfer payment and having accepted the same, waived his right to challenge the court's findings and rulings.

Mr. Mitrovich filed a motion to settle the record based on unsupported allegations the court's statements were not made part of the record. That court reserved an award of attorney's fees for the Court of Appeals. [CP 713-715] Mrs. Mitrovich renews her request for attorney's fees and costs.

An award of Attorney's fees on Appeal is discretionary with the court. *Marriage of Pascale*, 173 Wn. APP. 836 (2013).

## VI. SUMMARY

In summary, the trial court has substantial discretion, after reviewing all the evidence and hearing the testimony of the witnesses in making what is a fair and equitable property division. The Judge properly characterized the parties' home as a community asset, the Wife's

inheritance and personal injury damage settlement as her separate property. Mrs. Mitrovich traced and worked diligently along with Ms. Rosenoff to trace all of her mother's accounts and her maintaining separate accounts. Likewise, although having multiple health issues and surgeries, she worked diligently to photograph and characterize and value the separate and community personal property. Meanwhile, Mr. Mitrovich continued to obstruct preparation for finalization by withholding the passwords to the parties' computers and records; removed all the business income and failed to inform Mrs. Mitrovich of the funds received from copyrights. He failed to provide any values sought through discovery and caused unnecessary expenses at mediation by simply being uncooperative. The Court's finding of intransigence is reflected in the multiple hearings and unwarranted and unsupported legal theories advanced not just at trial but on appeal.

Dated this 2<sup>nd</sup> day of April, 2020.

Respectfully Submitted

LEE LAW OFFICE, P.S.

  
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Attorney for Appellee

I certify that on April 3rd, 2020, I served a copy of the Respondent's Brief via scanned email directed to Kenneth H. Kato, Appellant's attorney, at his email address at [Khkato@comcast.net](mailto:Khkato@comcast.net) and forwarded a hard copy to his office at 1020 North Washington, Spokane, WA. 99201-2237 via US Mail



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