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COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

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MARINA PALOMAREZ  
(fka Wilcox)

*Plaintiff / Appellant*

v.

MATTHEW E. WILCOX

*Defendant / Respondent*

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**REPLY BRIEF OF APPELLANT  
MARINA PALOMAREZ**

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**I. INTRODUCTION**

Appellant comes before this court after a long-term marriage just asking that she be treated fairly according to the law. When courts regularly award more property to the economically disadvantaged spouse in a long-term marriage, awarding significantly less assets to the economically disadvantaged spouse must be closely examined for fairness. Although spousal maintenance can be used by the court to counter this inequity, the spousal maintenance awarded in the case at bar will likely never even equalize the trial court's property division, or take a couple decades to do so, much less address the paramount concern of the court to examine the economic circumstances of each party at the time the division of property is to be effective. Intertwined in these issues, is the trial court's finding Respondent's income over five times less than what his tax returns verified, and not counting as income business payment of his personal expenses contrary to law. Nor is it fair to charge Appellant \$42,000 of rent in the property division for living in the family home while the divorce was pending and award Respondent \$20,000 as his separate property for a down payment on the family home for which there was no evidence, besides being contrary to authority. The trial court also gave Respondent, contrary to law, credit twice

for the same US Bank Line of Credit debt of \$20,086. The trial court first gave Respondent credit for this debt in the value of the business awarded to Respondent, and then a second time in the property division. Although abuse of discretion is a difficult standard to meet, Appellant has met it. The trial court could not fairly consider the statutory factors when dividing property and awarding maintenance if it erroneously determined Respondent's income contrary to law, and did not have before it evidence of Respondent's current income and expenses because Respondent did not provide such evidence. That is an abuse of discretion. Nor could the trial court charge Appellant \$42,000 of rent or give Respondent credit for \$20,000 of separate property as a down payment without any evidence in the record to support it. That is an abuse of discretion. In like fashion, the trial court could not credit Respondent twice for the same US Bank Line of Credit debt of \$20,087 like it did. That is an abuse of discretion.

**II. APPELLANT'S MOTION TO STRIKE RESPONDENT'S ASSIGNMENTS OF ERROR**

Respondent attempts to set forth three Assignments of Error in his response even though he did not file a notice of appeal or cross-appeal. (Amended Brief of Respondent, p. 6-8). Appellant objects to those

Assignments of Error and asks that they be stricken and not considered by this court. If a party wants to seek cross-review of a trial court's decision, that party must file a notice of appeal. RAP 5.1(d); *Hoel v. Rose*, 125 Wn. App. 14, 22, 105 P.3d 395 (2004); *Rogers v. Savage*, 112 Wash. 246, 252, 192 P. 13 (1920). Since the Respondent did not file a notice of cross-appeal, his alleged assignments of error should not be before this court. Accordingly, Appellant does not plan on responding to those assignments of error unless this court directs otherwise. However, having said that, Respondent appears to only address two issues in the argument section of his responsive brief, while seemingly addressing several issues, some raised by Appellant and some regarding his new assignments of error, in his "Counter Statement of the Case." It is difficult to reply as Respondent does not lay out his responses to Appellant's assignments of error or arguments in an orderly fashion. Any argument of Appellant below should not be construed as consenting to Respondent's assignments of error being addressed by this court or Appellant waiving any objection to Respondent's alleged errors being addressed by this court.

### **III. STATEMENT OF THE CASE**

Respondent's "**COUNTER STATEMENT OF THE CASE**" largely cites incorrect references to the record which do not support the contention they are cited for. Several examples follow. Respondent cites

RP 231 L20-24 to support his factual proposition that petitioner had access to over \$207,000 in an effort to show Appellant had a lot of money such that her lifestyle after separation was not disturbed. (See Amended Brief of Respondent, p. 9, 11). It does not say that. In that citation to the record, Appellant was asked if she agreed that she had received over \$253,000, and Appellant answered the question “no”. Respondent then cites RP 175 L13 for the factual proposition the above amount did not include funds she had received and used to pay down the mortgage on the family home. (See Amended Brief of Respondent, p. 9). It does not say that. In that citation to the record, Appellant was asked if she recalled when the family home was paid off, and she said, “My last house payment was June.” Respondent then cites RP 231 L11-19 for the factual proposition Appellant had received over \$200,000 made up of her wages when she was working, funds she withdrew at the time of separation, child support, spousal maintenance, along with gas and cell phone usage paid for by Respondent. Respondent again does this in an effort to show Appellant’s lifestyle after separation had not changed. (See Amended Brief of Respondent, p. 9). It does not support that contention. In that citation to the record, Respondent was asked two questions. The first question was whether Respondent had paid Appellant’s cell phone bills for a long time after separation to which Appellant responded, “The shop did.” The second question was whether Respondent

had paid \$200 a month in gas expense for about 36 months to which Appellant responded, “Matt didn’t pay for it, the shop did.”

Respondent cites RP 217 L24 for the factual proposition that \$20,000 of the down payment on the family home came from the sale of Respondent’s separate home in Duvall, WA. (See Amended Brief of Respondent, p. 11). It does not say that. In that citation to the record, Respondent asked Appellant if they lived in a house owned by Respondent in Duvall, WA when they first began living together and the Appellant said, “Yes.” The citation by Respondent says nothing about any down payment being made on the family home, much less how much it was or where it came from.

#### IV. ARGUMENT

A. Respondent’s only argument against the trial court abusing its discretion by awarding Appellant in a long-term marriage substantially less assets than Respondent who makes seven time the income is to make new assignments of error which were not appealed. (See Appellant’s Motion to Strike Respondent’s Assignments of Error above).

Respondent does not argue against the substance of Appellant’s argument that the trial court abused its discretion by awarding Appellant in a long-term marriage substantially less assets than Respondent who makes seven times the income of Appellant. Instead, Respondent argues the trial court abused its discretion in overvaluing the parties’ business in an effort

to produce a fair and just asset division. The problem is the value of the business as found by the trial court was not challenged by either party, so it is a verity on appeal. *Bingham v. Lechner*, 111 Wn. App. 118,127, 45 P. 3d 562 (2002); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn. 2d 801, 808, 828 P. 2d 549 (1992). The only reason Appellant did not challenge the value of the business was because the trial court's value was within the range of evidence. Respondent himself admits the trial court's value of the business was within the evidence as well. (See Amended Brief of Respondent, p. 35).

As Respondent argues in his brief, "Ultimately, the court's main concern must be the parties' economic situations post-dissolution." (Amended Brief of Respondent, p. 39). RCW 26.09.080(4) specifically requires the trial court consider the economic circumstances of each spouse at the time the division of property is to become effective in its disposition of the property and liabilities between the parties. A trial court cannot fairly consider the economic circumstances of the parties as it is required to do if it incorrectly finds one parties' income to be over five times less than what it had averaged over the last three years. Property division not based on a fair consideration of the statutory factors is an abuse of discretion. *Marriage of Anthony*, 9 Wash. App. 2d 555, 564, 446 P. 3d 635 (2019).

In the case at bar, the trial court found Respondent's income to be \$40,000 gross per year while his income averaged \$210,613 over the last

three years in a business he planned to continue working in for another 15 to 20 years. (Ex. PE 53.7, 53.11 and 53.14; CP 63). As awarded by the trial court, it would take 125 months or over 10 years of spousal maintenance at \$1,000 per month just to bring Appellant up to the property division level Respondent was awarded, not even addressing the fact Respondent makes over seven times the income of Appellant. As awarded by the trial court, spousal maintenance was \$1,000 per month for 47 months, and then \$734 a month beginning in the year 2032 unless Appellant choose to take an unknown reduced amount beginning ten years earlier in 2022. Using the known amounts, Appellant would not rise to the property division level of Respondent until the year 2040 without even taking into account the time value of money. If Appellant is correct and the trial court abused its discretion in assigning \$42,000 of fair rental value to Appellant then it would take 167 months or almost 14 years of spousal maintenance at \$1,000 per month just to bring Appellant up to the property division level Respondent was awarded. This is patently unfair to Appellant who has no college degree.

**B. Respondent's argument on spousal maintenance completely fails to respond to the trial court's inability to fairly consider Respondent's ability to pay spousal maintenance as it is legally required to do. (RCW 26.09.090(1)(f), Yakima County LSPR 94.04W(C)(2)(d)(iv)).**

Respondent did not respond to any of Appellant's citations to authority that all distributions on Schedule K-1, line 16 of a U.S. Income tax Return for an S Corporation (Form 1120S) constitute personal income to the shareholder by law. (See Brief of Appellant, p. 18). Respondent did not respond to any of Appellant's citations to authority that payment of his personal income taxes, all his divorce attorney's fees and all his divorce expert witness fees by the business constituted personal income to him as well by law. (See Brief of Appellant, p. 19-20). Respondent did not address Appellant's argument that Respondent's income should not be less than the \$155,772 gross annual income he represented under penalty of perjury in a financial declaration he filed just five months prior to trial. (PE 53.57). (See Brief of Appellant, p. 22). This is especially true when he did not file or prepare a statement regarding his income and monthly expenses for use at trial. (RP 487.)

Nor did Respondent address how it was factually impossible for Respondent to be making only \$40,000 gross a year considering just the monies he was paying to or on behalf of Appellant and his daughter. The monies he was paying to or on behalf of Appellant and his daughter were more than what Respondent would net after payment of Federal and FICA taxes on the \$40,000 gross found by the trial court. (See Brief of Appellant, p. 24-25).

Nor did Respondent address the fact he did not provide the trial court with a statement of his expenses at trial as required by Yakima County Local Special Proceeding Rule 94.04W (C)(2)(d)(iv). (See Brief of Appellant, p. 21-22). Respondent knew this was an issue and admitted in his testimony at trial that:

“it’s always been an issue that I don’t provide one.”

(RP 162).

Nor did Respondent address the fact he did not provide the trial court with any income information in regard to his business for an entire calendar year (2018) prior to trial. (See Brief of Appellant, p. 20-21).

Instead, Respondent makes several points regarding spousal maintenance for which he does not cite to the record, argues complete speculation or is simply not accurate. Respondent makes a specious argument about a gross calculation of \$114,000 of spousal maintenance stemming from Respondent’s pension from Graham Packaging which monthly payment was awarded to Appellant as spousal support. (See Amended Brief of Respondent, p. 22). Respondent was eligible to receive a monthly pension of \$734.45 beginning December 1, 2032. (CP 81). Appellant was awarded the monthly payment as spousal maintenance. The pension payments could start 10 years earlier for a reduced unknown

amount. It is complete speculation on Respondent's part to guess that a pension paying \$734 a month would pay \$500 a month (or only be reduced by \$234 a month) if it started paying out 10 years earlier. As an example, Appellant's Social Security statement reveals her payment to be \$1,095 at full retirement age of 67, but if she wants to start receiving it 5 years earlier at age 62 her payment drops to \$751 or about a 32% reduction. (PE 53-18). The reduction in Appellant's social security payment starting just 5 years earlier happens to be about the same percentage reduction Respondent is speculating for his Graham Packaging pension payment starting 10 years earlier. Even though Respondent states it is not precise, he still includes it in his calculations to make the spousal maintenance going to Appellant fictitiously appear much larger.

Further, his belief that such reduced amount was unavailable at trial lacks any foundation. (See Amended Brief of Respondent, p. 23). Respondent also attempts a calculation of what Appellant will earn from the date of separation until she reaches age 65 in 2032. He states as fact \$2,000 per month is lower than Appellant's net wages at any time during the marriage. (See Amended Brief of Respondent, p. 24). This statement is very inaccurate. Appellant's Social Security Statement shows there were 17 years during the marriage when her gross income was less than \$2,000 per month average, much less \$2,000 net as represented by Respondent. (PE

53-18). Respondent also represents that Appellant only paid a total of \$6,500 towards her attorney's fees and costs in this divorce which is not accurate. (See Amended Brief of Respondent, p. 26). Appellant had paid \$26,385.01 as of August 2018 towards her attorney's fees and costs of litigation. (PE 53.49).

As stated in *Marriage of Anthony*, 9 Wash. App. 2d 555, 564, 446 P. 3d 635 (2019): "Maintenance not based on a fair consideration of the statutory factors constitutes an abuse of discretion." The trial court is required to consider the ability of the spouse from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse seeking maintenance. RCW 26.09.090(1)(f). If a trial court does not address one spouse's ability to pay maintenance or that spouse's needs and financial obligations, it will be remanded. *Marriage of Anthony, Id.* at 567. The trial court found Respondent was only capable of making \$40,000 gross per year for spousal maintenance purposes. Respondent's average gross income on his tax returns for 2015-2017 averaged \$210,613 a year. (Ex. PE 53.7, 53.11 and 53.14). The trial court could not have fairly considered Respondent's ability to pay if it found his income to be over five times less than what it had averaged over the last three years as reported on his individual tax returns. Not only this, the business paid off \$50,000 of debt owed to Respondent's mother in 2017

which would have been income to Respondent had it not chose to reduce that debt instead. (RP 352-353, Ex. PE 53.15, Schedule L, line 20). Pursuant to the trial court's Final Divorce Order on May 3, 2019, Respondent has paid in 13 months attorney's fees to Appellant of \$27,376, spousal maintenance of \$13,000 and paid off the US Bank Line of Credit debt of \$20,086 for a total of \$60,462. (Amended Brief of Respondent, p. 10, 27). Not bad for a person who only makes \$40,000 gross a year and this does not even include any of Respondent's own living expenses.

Respondent's only defense to the trial court finding his income at \$40,000 gross per year was in his self-serving representation where he stated "the undisputed fact" is that prior to separation the parties' incomes were almost equal, without any reference to evidence. (Amended Brief of Respondent, p. 40). That is not a true statement. Respondent's income in 2015 was \$195,522 and in 2014 his income was \$86,678. Appellant's income in 2015 was \$32,736 and in 2014 her income was \$32,281. (PE 53.7 and 53.4). Besides not true, the real issue is the parties' incomes at the time of trial, not 3 ½+ years prior to trial. How can the court know Respondent's ability to pay if it is not based on consideration of his income at the time of trial? How can the court's paramount concern of the economic circumstances each spouse will be left in at the time of divorce be fairly evaluated, if one party's current income is not known? How can a court

fairly consider this issue if it found his income to be over five times less than what it had averaged over the last three years? The reasoning of the court in *Dickison v. Dickison*, 65 Wn. 2d 585, 591, 399 P. 2d 5 (1965) applies here. The court in *Dickison, Id.*, at 591 stated:

“...it appears that respondent’s income is substantially more than that found by the trial court and consequently will support a larger alimony award.”

**C. Respondent cites no authority to support the trial court’s retroactive imputation of \$42,000 of rental value to Appellant when there was no evidence of rental value before the court.**

Instead, Respondent makes a conclusory argument without citation to authority that because Appellant’s lifestyle was not disturbed, she had exclusive use of the family home, she received spousal maintenance, etc., it was not an abuse of discretion to retroactively charge Appellant \$42,000 rent. (Amended Brief of Respondent, page 40-41). Respondent should be required to cite to authority for such a proposition. When such a claim is made without citation to authority, this court is not required to search for such authorities but may assume counsel found none after diligent search. *DeHeer v. Seattle Post-Intelligencer*, 60 Wash.2d 122, 126, 372 P2d 193 (1962).

Respondent does try to distinguish the case of *Atkinson v. Atkinson*, 38 Wash. 2d 769, 231 P. 2d 641 (1951) cited by Appellant. However, the

Amended Brief of Respondent does not accurately represent the facts in that case. Respondent states that Mr. Atkinson valued certain properties at \$4,000, not including furniture. (Amended Brief of Respondent, p. 33). The truth is Mr. Atkinson valued those properties at \$6,800, not including the furniture, which was the lowest value placed on those properties at trial. Because the trial court found the value of those properties to be \$5,000, which was below the lowest value in evidence, the Atkinson court found the trial court abused its discretion. *Id.* at 772-773.

Since there was no evidence of the fair rental value of the family home in the case at bar, it was an abuse of discretion for the trial court to place a rental value on Appellant's use of the family home because such value would not be supported by the evidence. The trial court itself admitted there was no direct evidence placed on the record of the fair rental value of the family home. (CP 21). Nor does Respondent comment on the Nuss case cited by Appellant, nor the unfairness of not putting a spouse on advance notice of rental charges so intelligent residency decisions can be made, nor the importance of the parties' minor child being able to live in the family home while the divorce is pending. For all these reasons, the trial court abused its discretion and the \$42,000 of retroactive rent charged to Appellant should be stricken.

**D. Respondent does not in any respect argue against the fact the trial court credited Respondent twice for the same US Bank Line of Credit debt of \$20,087.**

Respondent did not devote any part of his responsive brief to this assignment of error. Since Respondent does not cite to any authority, evidence or even make a conclusory remark against it, this court may assume there is none. RAP 10.3(b); *DeHeer v. Seattle Post-Intelligencer*, 60 Wash.2d 122, 126, 372 P2d 193 (1962); *West v. Thurston County*, 168 Wn. App. 162,187,275 P.3d 1200 (2012). (Brief of Appellant, p. 29).

**E. Respondent does not in any respect argue against the fact the trial court made Contradictory Findings of Respondent's Income.**

Respondent did not devote any part of his responsive brief to the trial court's contradictory findings that Respondent was only capable of making \$40,000 gross for purposes of spousal maintenance, while finding \$100,000 was reasonable compensation for Respondent's work for purposes of valuing the business. Since Respondent does not cite to any authority, evidence or even make a conclusory remark against it, this court may assume there is none. RAP 10.3(b); *DeHeer v. Seattle Post-Intelligencer*, 60 Wash.2d 122, 126, 372 P2d 193 (1962); *West v. Thurston County*, 168 Wn. App. 162,187,275 P.3d 1200 (2012).

**F. Respondent incorrectly cites to the record as evidence he put \$20,000 of his separate money down on the purchase of the family home, while also making a meritless argument that because Appellant**

**lacked credibility the trial court was justified in crediting Respondent \$20,000 towards the down payment on the family home.**

Respondent cites RP 217 L24 for the factual proposition that \$20,000 of the down payment on the family home came from the sale of Respondent's separate home in Duvall, WA. (See Amended Brief of Respondent, p. 11). In that citation to the record, Respondent asked Appellant if the house they first began living together in was owned by Respondent in Duvall, WA and the Appellant said, "Yes." The citation by Respondent says nothing about any down payment being made on the family home in Yakima, much less how much it was or where it came from. Respondent then argues in his conclusion where he boldly, but inaccurately states "Given the undisputed fact that the entire down payment for the family home in the sum of \$20,000 came from Respondent's separate property...it was not an abuse of discretion to credit Respondent in that sum...". (Amended Brief of Respondent, page 41). Contrary to Respondent's contention, there was no evidence in the record to support it and therefore it cannot be undisputed. Further, Respondent does not make any other citations to the record in support of it. Whether you are Appellant or Respondent, you cannot cite to the record for evidence which does not exist. We do not know what, if any amount, was paid down on the family

home when it was purchased in 1996, or where any such money came from had there been a down payment.

Even though there was no evidence presented at all, Respondent essentially argues that because Appellant lacked credibility, the trial court did not abuse its discretion by crediting Respondent \$20,000 towards the down payment on the family home. (Amended Brief of Respondent, page 30). By this argument, Respondent is basically saying if one spouse lacks credibility the trial court is free to assume facts the other spouse had personal knowledge of but failed to testify about, and the burden then shifts to the spouse lacking credibility to prove otherwise. This argument is baseless. It assumes Respondent had \$20,000 that was his separate property, that it had not been comingled or otherwise changed (transmuted) to community property at the time of the purchase of the family home two years into their marriage, and that this \$20,000 was paid down on the purchase of the parties' family home. There is no evidence of any of this and Respondent points to no authority in support of such an argument.

As stated in *Marriage of Schwarz*, 192 Wash. App. 180, 189, 368 P.3d 173 (2016):

“The character of property, whether separate or community, is determined at the time of acquisition. In re *Marriage of Pearson–Maines*, 70 Wn. App. 860, 865, 855 P.2d 1210 (1993). Property acquired during

marriage is presumptively community property. A party may rebut this presumption by offering clear and convincing evidence that the property was acquired with separate funds. In re *Marriage of Skarbek*, 100 Wn.App. 444, 449, 997 P.2d 447 (2000). “The requirement of clear and satisfactory evidence<sup>1</sup> is not met by the mere self-serving declaration of the spouse claiming the property in question that he acquired it from separate funds and a showing that separate funds were available for that purpose.” *Berol v. Berol*, 37 Wash.2d 380, 382, 223 P.2d 1055 (1950). “Separate funds used for such a purpose should be traced with some degree of particularity.” *Id.*”

In the case at bar, the family home was purchased during the marriage and was therefore presumed to be community property. Respondent did not testify that he put \$20,000 of his separate money down on the purchase of the family home. It is Respondent’s burden to rebut the presumption, which he did not even attempt to do. Therefore, the trial court abused its discretion in crediting Respondent \$20,000 as his separate property against the attorney’s fees awarded Appellant.

**G. The Trial Court’s Finding the Business Paid Minimal Personal Expenses Which Benefited Both Parties Equally Post-Separation is Erroneous Despite Respondent’s Self-Serving Claims to the Contrary.**

Respondent claims it is undisputed fact that the business paid minimal personal expenses, that such payments were to the benefit of both parties, and Appellant produced no evidence to the contrary. (Amended

Brief of Respondent, page 41-42). These claims by Respondent were without specific reference to any evidence or argument against the laws and authorities cited by Appellant. (Brief of Appellant, p. 18-20). This is not an issue of conflicting evidence or credibility. By law, the business cannot pay Respondent's Federal income taxes, his divorce attorney's fees, his divorce expert witness fees or his court ordered family support as it did. The trial court's finding to the contrary is clearly erroneous. The trial court found that it was a common practice of small business owners to run personal expenses through a business and that it amounted to approximately \$4,000 per year on average. The trial court specifically found:

“...both parties had the advantage of running these expenses through the business account post-separation. The court acknowledges the benefits secured through the business but treats them as a wash for purposes of the disposition of the community's estate as both parties appear to have benefited equally.” (CP 60).

In 2017, the business paid \$28,852.77 of Respondent's Federal income taxes (RP-43); \$15,000 of his divorce attorney's fees (RP-42); and \$6,600 of his divorce expert witness fees (RP-43) for a total of \$50,452.77 of personal expenses. All these personal expenses paid by the business in just one year were solely to the benefit of Respondent and of no benefit to Appellant. (RP 42-43, 154-155). The business paid \$5,000 of Respondent's

divorce attorney's fees and \$5,200 of his court ordered family support in 2015. (PE 53.39). The business paid \$13,500 of his divorce attorney's fees in 2016. (RP 42). Just these payments alone in the two- and one-half years that they cover from date of separation to the end of 2017, average \$29,661.11 a year of personal expenses paid by the business on Respondent's behalf. This evidence clearly preponderates against the trial court's finding that business payment of personal expenses only averaged \$4,000 a year and each party benefited equally post-separation. That is simply not true. If the evidence clearly preponderates against the finding of the trial court, such finding will not be upheld. *Hammond v. Hammond*, 45 Wash.2d 855, 858, 278 P.2d 387 (1955).

**H. Respondent does not cite any authority against Appellant's argument that it was error for the trial court to find the Mortgage Escrow Refund Check was community property.**

Respondent does not argue against the separate nature of the monies Appellant had paid in 2018 which were held in escrow to pay the homeowner's insurance and property taxes as they became due. Instead, Respondent simply argues that since the home mortgage was a community debt, it was not error for the court to consider Appellant's advanced but unused monies as community property and divide it in half. (See Amended Brief of Respondent. P. 42). Appellant submits her undisputed advanced but unused separate monies in escrow for payment of homeowners' insurance

and property taxes as they became due in 2018 (three years after separation) clearly retained its separate character. Her separate monies which sat in an escrow and were then refunded when not used retained its separate character. Just like the trial court gave Appellant credit for her separate payments on the parties' community mortgage after separation (CP 21, 37), Appellant's advanced but unused separate monies should be credited back to her. Appellant further submits this situation is analogous to our court's treatment of the payment of life insurance premiums. Our courts determine the ownership character of life insurance by the character of the funds used to pay the premium. *Aetna Life Insurance Company v. Bunt*, 110 Wash. 2d 368, 371, 754 P.2d 993 (1988). In like fashion, Appellant's undisputed advance of her monies for payment of property taxes and insurance a few years after separation, and for which she had to pay these expenses even after the underlying mortgage was paid off, is still her separate property. *Id.* at 372.

#### V. CONCLUSION

This court should reverse the trial court's division of assets and liabilities and remand that issue back to the trial court for determination based on Respondent's true income and any changes this court makes to the asset and liability issues raised herein. This court should strike the trial court's finding that Respondent's income for purposes of spousal

maintenance was only \$40,000 gross a year and that the business only paid minimal personal expenses to the equal benefit of both parties' post-separation. These issues should be remanded back to the trial court along with the establishment of spousal maintenance with directions to calculate Respondent's income on his total income shown on his individual tax returns plus all personal expenses paid by the business on his behalf. This court should also reverse the trial court's charge of \$42,000 of rental value to Appellant and the \$20,000 credit to Respondent for the down payment on the family home (and the corresponding offset against Attorney's Fees awarded Appellant by the Trial court) as being without evidence and contrary to established authority. In addition, this court should reverse the \$20,086 credit to Respondent for paying off the US Bank Line of Credit debt which was already taken into consideration in valuing the parties' business (and the corresponding offset against Attorney's Fees awarded Appellant by the Trial court). Further, this court should reverse the trial court's finding and crediting Respondent for half of the Escrow refund check as community property. And finally, this court should award Appellant her attorney's fees and costs as addressed and requested in the Brief of Appellant.

DATED this 7<sup>th</sup> day of May, 2020.

HALVERSON | NORTHWEST Law Group P.C.  
Attorneys for Appellant Marina Palomarez

By:   
Raymond G. Alexander, WSBA No. 14592

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

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Erin Schwabauer, Legal Assistant  
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**Appellate Court Case Title:** In re Marriage of: Marina Palomarez (fka Wilcox) and Matthew E. Wilcox  
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