

67817-5

67817-5

RECEIVED
COURT OF APPEALS
DIVISION ONE

NOV 13 2012

No. 67817-5

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DORIS BERG,

Respondent/Cross-Appellant,

vs.

LOUIS BERG,

Appellant/Cross-Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE GREGORY P. CANOVA

RECEIVED
COURT OF APPEALS
DIVISION ONE
NOV 13 11:09 AM '12
K

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

SMITH GOODFRIEND, P.S.

STOKES LAWRENCE, P.S.

By: Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. 34515

By: Jason Holloway
WSBA No. 29629

1109 First Avenue, Suite 500
Seattle, WA 98101
(206) 624-0974

800 Fifth Avenue, Suite 4000
Seattle, WA 98104
(206) 626-6000

Attorneys for Respondent/Cross-Appellant

TABLE OF CONTENTS

I. REPLY ARGUMENT1
II. CONCLUSION 2

TABLE OF AUTHORITIES

CASES

White v. White, 105 Wn. App. 545, 20 P.3d
481 (2001)1

I. REPLY ARGUMENT

Respondent Doris Berg's conditional cross-appeal challenges the trial court's treatment of a \$1 million shareholder loan from appellant Lou Berg to Crown Finance. Both parties now agree that "if you add \$1 million to Lou's column you have to back \$1 million out of Crown Finance." (Cross-Response Br. 25) Appellant thus *concedes* that the trial court erred here, because while it "backed out" \$1 million as a liability from Crown Finance when it awarded it to him, the trial court then failed to "add" the loan to appellant's side of the ledger as an asset. (See CP 1014-16)

Appellant also admitted at trial that the \$1 million shareholder loan that he made to Crown Finance was a debt that Crown Finance was "not likely" to pay back. (RP 331) The trial court therefore erred in reducing the net value of Crown Finance by including this fictitious debt. *White v. White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) (in an action to dissolve a marriage, the court must focus on the assets and liabilities of the parties "then before it"). The trial court then exacerbated its error by failing to include this purported shareholder loan, which it assumed would be repaid, on appellant's side of the ledger as an asset. (See FF 2.21.2, CP 1010; CP 1014-16; Ex. 27) Either it should not have been

included as a debt of the business, or it should have been included as an asset of the appellant.

This is not, as appellant asserts, “trying to make something out of a whole lot of nothing.” (Cross-Response Br. 24) Instead, as a result of the trial court’s error, appellant’s net overall award of the marital estate increased by over \$1 million from 62% to 67% – an increase of 5% that is considerably more than a “whole lot of nothing.”

It has been more than three years since the parties separated, and more than a year since the parties’ marriage was dissolved after a five-day trial. To finally end this litigation, the wife, now age 65, only asks this court to reverse on this issue if it remands on any of the issues raised in the husband’s appeal. In the event this court remands, it should direct the trial court to reconsider its property distribution based on a proper consideration of the shareholder loan.

II. CONCLUSION

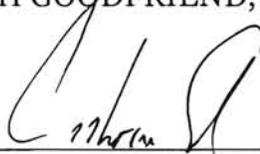
This court should affirm the trial court’s discretionary decisions challenged by the husband on appeal. In the event this court remands on any of the issues raised by the husband in his appeal, this court should also remand for the trial court to

reconsider its treatment of the shareholder loan in its overall property distribution. In either event, this court should award the wife all of her attorney fees incurred on appeal based on her need and the husband's ability to pay.

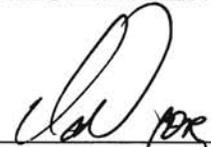
Dated this 13th day of November, 2012.

SMITH GOODFRIEND, P.S.

STOKES LAWRENCE, P.S.

By:  _____

Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. 34515

By:  _____

Jason Holloway
WSBA No. 29629

Attorneys for Respondent/Cross-Appellant

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on November 13, 2012, I arranged for service of the foregoing Reply Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
Jason Holloway Stokes Lawrence, P.S. 1420 Fifth Avenue, Suite 3000 Seattle, WA 98101-2393	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Patricia Novotny Attorney at Law 3418 NE 65th St Ste A Seattle, WA 98115	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Maya Trujillo Ringe Lasher Holzapfel Sperry & Ebberson PLLC 601 Union St Ste 2600 Seattle, WA 98101-4000	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

2012 NOV 16 11:10

DATED at Seattle, Washington this 13th day of November,
2012.



Victoria K. Isaksen