

68433-7

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No. 68433-7
IN THE WASHINGTON COURT OF APPEALS,
At Division 1,
BRAD BART BROWN, Respondent
v
LUCY MARIE BROWN, Appellant
(now known as Lucy Marie Braun)

AN APPEAL FROM THE SUPERIOR COURT OF WASHINGTON,
County of Skagit

Appellant's Reply Brief

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B. Preliminary Statement

The trial judge had not read any of Wife's motions set for the day of trial. And she denied all of them without allowing Wife to present any evidence thereon.

C. Argument

1. The trial court erred in refusing to hear Wife's In Limine Motion prior to the commencement of the trial.

Husband's "Response" ignored this issue altogether, much like the trial court ignored Skagit County Local Rule 7(g), requiring it to hear Wife's in limine motion prior to trial. Wife brought an in limine motion which sought to prohibit Husband from testifying as to a \$2,000.00 loan he claimed to have taken out to purchase the BMW. (CP 185, 188, 189.)

A motion in limine is a procedural mechanism to limit in advance testimony or evidence in a particular area. State v. O'Connor, 155 Wash. App. 282, 290, 292 P.3d 880 (2010). The appellate court reviews such a decision under the abuse of discretion standard. Id., at 290. Wife attempted to object to the court ignoring Skagit County Local Rule 7(g) at 1/18/12 RT 5:19, but the court would not even let her state her ground for objection. Again, Wife attempted to object, stating, "I had preliminary motions for excluding evidence. I was hoping that before we actually went into the trial, those could be heard. That's pretty standard procedure for an in limine motion excluding evidence to go before." 1/18/12 RT 9:4-7. Still, the court ignored Skagit County Local Rule 7(g). Abuse of discretion occurs where the trial court's action is manifestly unreasonable or exercised on untenable grounds, or for untenable reasons. State v. Powell, 126

Wn.2d 244, 258, 893 P.2d 615 (1995); State v. Enstone, 137 Wn.2d 675, 679-90, 974 P.2d 828 (1999). A trial court may abuse its discretion by applying an incorrect legal analysis or other error of law. State v. Tobin, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). The trial court abused its discretion by ignoring Wife's in limine motion, and Wife's objection to the trial going forward without her in limine motion being heard.

The judge violated Skagit County Local Rule 7(g) by refusing to hear Wife's in limine motion before trial. While granting or denial of a motion in limine is within the discretion of the trial court, the judge was not endowed with the discretion to ignore Skagit County Local Rule 7(g) by ignoring Wife's in limine motion altogether.

In accordance with Wife's in limine motion, Husband's claim to separate property proceeds from the BMW sale should have been limited to what he could prove with documentation or live testimony from the supposed lender. He had ample time to subpoena the person he claimed loaned him \$2,000.00 to purchase the BMW, and ample time to get a receipt from the supposed lender. He did nothing. The burden of proof is on the party claiming separate funds were used to purchase a vehicle during the marriage. Husband's self-serving statements alone do not meet that burden of proof, as the court held in Beam v. Beam, 18 Wash. App. 444, 569 P.2d, Div. 3 (1977).

Wife had the right to expect Husband to provide proof of the loan Husband claimed to have taken out, not just his self-serving statements. The court certainly held Wife to a strict standard with respect to securing subpoenas

(1/20/12 RP17:15-17,) regardless of Husband's dilatory tactics in wrongfully withholding her property for over 5 months, and in bringing 2 frivolous denied motions Wife attempted to cover as a ground for granting her motion for continuance. 1/18/12 RP 13:7-22; 1/20/12 RP 14:11-13. To fail to hold Husband to that standard was a prejudicial abuse of discretion, particularly since Wife did not engage in any intransigence or dilatory tactics preventing Husband from subpoenaing witnesses.

Allowing Husband's self-serving testimony about the supposed \$2,000.00 loan violated Wife's right to have the case decided on evidence. It is axiomatic that courts must decide cases based on evidence, not based on prejudices or assumptions. But the court's Findings gave no explanation as to how it concluded that the car sale proceeds were Husband's separate property based upon evidence or objective testimony from the alleged lender.

Wife objected to Husband's self-serving testimony in her in limine motion. CP 185, 188. 1/18/12 RP 9:3-7, and at trial. 1/20/12 RP 46:20-22. But the court did not read and refused to hear Wife's in limine motion prior to trial. The court merely said, "Let me hear your opening first." (1/18/12 RP 9:98.) And in her Opening Brief and Motion for Order Permitting Husband's Bank Records (received after trial) to be made part of Appendix A to Wife's Opening Brief, Wife pointed out the error of the court in finding the parties had no community property based on Husband's self-serving testimony alone as to the supposed \$2,000.00 loan.

Admission of Husband's self-serving testimony without reading Wife's in

limine motion to exclude it and over Wife's objection was tantamount to surprise testimony, and is grounds for a new trial upon a showing of prejudice. Kramer v. J.I. Case Mfg. Co., 62 Wn. App. 544, 562 (1991). A new trial is warranted under the "unfair surprise" portion of CR 59(a)(3).

Wife's objection to Husband's self-serving testimony about a supposed \$2,000.00 loan ensured that the trial court was given timely opportunity to avoid error and the necessity of a new trial, as required by State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). Wife made a timely objection when Husband's self-serving testimony was introduced. (RP 47:17-22.)

Any slight probative value in the self-serving testimony was substantially outweighed by the danger its unfair prejudice. ER 401, 402, 403. Under Beam v. Beam v. Beam, supra, Husband's self-serving testimony could not be used as the sole determining factor to rebut the community property presumption.

Allowing Husband's self-serving testimony as to an alleged \$2,000.00 loan to purchase the BMW to rebut the community property presumption that arose by reason of the fact that the BMW was purchased during the marriage was prejudicial in that based solely thereon, the court subsequently awarded the BMW sale proceeds to Husband by finding that the parties had no community property in the BMW proceeds. The unsubstantiated loan went to the heart of the dispute about the BMW purchase and sale. Prior to trial, Husband had been ordered to produce a "sworn statement" from the supposed lender (11/14/11 HP24:7-11), but did not. Regardless, he produced no evidence or third-part objective witness testimony about the supposed loan.

A trial court may exclude relevant evidence if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. ER 403.

It was an abuse of discretion NOT to exclude Husband’s self-serving statements about the supposed loan, which further distorted the facts that he had already distorted by 1.) selling the BMW in violation of the restraining order in place in the action, 2.) providing only the face sheet of his bank statements he was ordered to produce, thereby concealing the community nature of the earnings deposited into the account by his employer and the itemized dates and amounts of his withdrawals, like the \$2,000.00 and \$22.75 withdrawals he made to purchase the BMW, 3.) disobeying a court order to produce a “sworn statement” from the person he claimed loaned him \$2,000.00 to purchase the BMW, and 4.) failing to produce documents or third-party witness testimony at trial to substantiate the claimed loan.

Husband committed perjury in his 10/31/11 Answer to Interrogatories (CP 66), stating he received only a \$14.75 profit from the sale, which Answers were filed and served over 2 months AFTER the true \$3,800.00 sale, was clearly perjury. In his 11/22/11 “Response to Documents Requested by Commissioner Paxton on 11/14/11” (CP 85), filed with the court over three months AFTER the true sale to Howard Koch on August 11, 2011, his statement that Guyle Adkerson was the buyer was also perjury. By that 11/22/11 filing date, Husband knew the true buyer name, and true sale price, and knowingly did not provide them.

The judge never should have entertained all this subterfuge. To consider this testimony to rebut the community property presumption was unfair prejudice toward Wife. Had the judge followed Skagit County Local Rule 7(g), and Beam v. Beam, supra, Husband's self-serving testimony would have been limited to documentation or third-party witness testimony he could provide. However, Husband provided no such third-party testimony or evidence. Husband's testimony should have been limited to proof of the loan he could supply, not just his word, particularly after he had sold the BMW in violation of the restraining order, after he had violated the court order that he provide a "sworn statement" from the supposed lender, after he violated the court order that he provide Wife with the true name of the buyer, and after he only provided the face sheets from the bank statements he was ordered to provide Wife for the period covering the BMW purchase.

Wife should receive de novo review based upon the improper admission of Husband's self-serving statements to rebut the community property presumption that arose by reason of the fact that the BMW was purchased during the marriage.

2. The trial court erred in denying Wife's Motion for Order Continuing Trial.

Husband's "Response" failed to provide any legal authority or any specific reference to evidence in the record to support affirming the trial court's denial of Wife's Motion for Order Continuing Trial when Wife attempted to provide grounds for a continuance, but the trial court denied her request without letting

her present evidence of good cause for a continuance until all subpoenaed records and testimony could be secured.

In Husband's "Response," he states that Wife filed "hundreds of frivolous papers," but nowhere did the court find that to be the case. In fact, Wife's Opening Brief, at pp. 6-8, outlines in detail how her motions were granted, and Husband's motions were denied.

Wife's motion for continuance of trial was set for the day of trial, but the judge did not read it. At trial, Wife requested a continuance until she received Husband's subpoenaed bank records. (1/18/12 RP 14:22; 1/20/12 RP 5:4-7.) Her request was denied before she could present testimony or evidence related to grounds for continuance. (1/18/12 RP 26:25-27:1.) Thus, it was an abuse of discretion for the court to find Wife had no grounds for a continuance.

Had a continuance been granted until Husband's bank statements arrived pursuant to Wife's subpoena, the statements would have shown the \$2,000.00 that came from Husband's community earnings directly deposited into his bank account by his employer, Dakota Creek Industries, not from a loan.

3. The trial court erred in finding the parties incurred community liability on a possible dog bite claim.

Husband's "Response" completely ignored this issue. The standard of review for a trial court's Findings of Fact and Conclusions of Law is a two-step process: first, the appellate court must determine if the trial court's findings of fact were supported by substantial evidence in the record, and if so, the appellate court must next decide whether those findings of fact support the trial court's

conclusions of law. Landmark Development, Inc. v. City of Roy, 138 Wash. 2d 561, 980 P.2d 1234 (1999). “Substantial evidence” is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding. Estate of Marcella Louise Jones v. Russell K. Jones, 152 Wash.2d 1, 93 P.3d 147 (2004). With Wife denied a continuance of the trial in this matter necessitated by the multitudes of motions required by Husband’s dilatory tactics, “substantial evidence” was denied to Wife to put on her case. It is reasonable and appropriate for the Appellate Court to conclude that Husband’s clear history of intransigent behavior remains unchanged in his unsubstantiated claims in this appeal. His baseless, repetitive and improper pleadings that were denied and procedure practices injured Wife by forcing her to sell thousands of dollars’ worth of her personal property, and to take out loans to finance this appeal. Intransigence is the state of being uncompromising. In re Marriage of Schumacher, 100 Wash. App. 208, 216, 997 P.2d 399 (2000). At no point did Husband offer any form of compromise over the course of this case, other than to offer the whopping sum of \$14.75 if Wife would only allow him to keep thousands of dollars’ worth of her personal property that remained in his possession, and thereafter leave the state of Washington. As set out in Wife’s Opening Brief, at pp. 6-8, while indigent, Wife was forced to get a court order that Husband pay her maintenance, a court order that he respond to her discovery requests, a court order that he return her personal property, a court order that subpoenas issue for bank records he had previously been ordered to produce to Wife, a court order for a fee waiver of subpoena issuance fees. The court would not even let Wife submit the \$180.00 she paid her

attorney for assistance with her maintenance motion, nor entertain any argument of equitable grounds for attorney fees, despite Husband's plethora of delay tactics. To deny such, and find Wife entitled to no attorney fees was an abuse of discretion. Washington courts have found intransigence as a basis for attorney fees when a party engages in obstructive behavior or delay tactics, files unnecessary motions, or participates in other activities that make trial unduly difficult or that increase legal costs unnecessarily. e.g., In re Marriage of Foley, 84 Wash. App. 839, 846, 930 P.2d (1997); In Re Marriage of Crosetto, 82 Wash. App. 545, 564, 918 P.2d 954 (1996); In re Marriage of Greenlee, 65 Wash. App. 703, 708, 829 P.2d 1120 (1992). In addition to being uncompromising on the aforementioned matters, Husband engaged in tactics designed to obstruct Wife's preparation for trial by filing unnecessary motions: 1.) a motion for a restraining order that was denied, and 2.) a motion for modification of the maintenance award to Wife, which was also denied. All these tactics substantially increased Wife's legal costs unnecessarily by forcing her to research, prepare, file, serve and appear on all these motions.

4. The trial court erred in finding the parties do not have personal community property.

Property acquired during marriage has the same character as the funds used to buy it. In re Marriage of Zahm, 138 Wash.2d 213, 223, 978 P.2d 498.

Any separate property that Husband may have put toward the BMW purchase was commingled with his community earnings that he used to purchase the BMW. The nominal separate funds he also withdrew became community

property because they were commingled with community funds in a manner that could not be traced. In Re Marriage of Pearson-Maines, 70 Wash. App. 860, 855 P.2d 1210 (1993). Regardless, only if the sources of deposits can be traced and identified is the separate identity of the funds preserved. In re Marriage of Skarbek, 100 Wn. App. 444, 448, 997 P.2d 447 (2000). Husband provided no evidence of any traceable separate property related to the purchase of the BMW.

Husband's "Response" completely ignored this issue. His self-serving statements about a supposed loan to purchase the BMW alone do not constitute evidence. And pro se parties are held to the same rules of procedure and substantive law as attorneys. Westberg v. All-Purpose Structures, Inc., 86 Wash. App. 405, 411, 936 P.2d 1175 (1997). Husband's false claims of putting \$10,000.00 into this marriage are nowhere substantiated in the trial record or anywhere in the court file. In fact, his subpoenaed bank records indicate quite the opposite.

Husband testified that during the marriage, he took out a \$2,000 loan to purchase a BMW. He provided only his self-serving statements to substantiate this supposed loan. (1/18/12 RP 41: 25-42:7.) Wife objected, stating had provided "no evidence" to substantiate this supposed loan. 1/20/12 RP 46:20-22, nor any receipts for his supposed purchase of parts for the BMW. 1/20/12 RP 47:4-6. The court abused its discretion in relying solely upon Husband's self-serving statements to conclude the BMW was his separate property, concluding "he took out the loan to buy the car to begin with." (1/20/12 RP 43:6-7.) This she cannot do under Beam v. Beam, *supra*.

Husband's subpoenaed bank records show the community nature of funds he used during the marriage to purchase a BMW he sold in violation of the restraining order in this action, for a profit substantially greater than the \$14.75 he claimed in his discovery responses (CP 66,) and the records show his concealment of community assets.

The appellate court reviews de novo a trial court's characterization of property as separate or community, for purposes of equitable distribution in a marriage dissolution action. West RCWA 26.09.080; Marriage of Zier, 136 Wash. App. 40, 147 P.3d 624 (2006). Husband's bank records in Appendix A (to which Husband has provided no factual or legal grounds for his objection) show that on 4/22/11, Husband's employer deposited \$935.49 into his account, and on 4/29/11, it deposited \$934.49, for a total of \$1,839.98 in community earnings deposited into the account by his employer by 5/7/11, the date he purchased the BMW. That same bank statement shows on 4/28/11, Husband withdrew \$2,000 from that account ending number ending in 1783, and on 5/7/11, he withdrew \$22.75 from a Bellingham ATM (posting on 5/9/11), such that he commingled and/or took a withdrawal against future earnings, such that his \$2,000 and \$22.75 withdrawals, just prior to buying the BMW, were withdrawals from community earnings. (3/22/11 to 5/20/11 Bank of America Statements) These bank statements further show that the court's conclusion that the BMW was purchased with Husband's separate property, based solely on Husband's self-serving testimony about a loan, was a conclusion not supported by substantial evidence in the record, as required by Landmark Development, Inc. v. City of Roy, supra.

Husband's bank records, received after trial, show his self-serving statements about an alleged loan to purchase the BMW, which were the sole basis for the trial court finding the BMW to be his separate property, were out-and-out perjury. His 3/22/11- 5/20/11 bank records show that just 9 days before buying the BMW, he withdrew \$2,000 from community earnings his employer directly deposited into his checking account, and on 5/7/11 (the date he purchased the BMW), he withdrew \$22.75 from that account at an ATM in Bellingham (where the BMW was purchased), because, as the 5/7/11 Bill of Sale (CP 66) shows, the purchase price for the BMW at Berglund & Jones Auctioneers, Inc. was \$2,277.47, and as Husband testified, he keeps "cash" on him. 1/20/12 RP.

Generally, for purposes of distributing property during a dissolution proceeding, a court can exercise its equitable powers and evaluate whether a party concealed community assets. Marriage of Burg, 126 Wash. App. 546, 108 P.3d 1278 (2005.) As such, this court may find that Husband's concealment of his community income, his concealment by the same manner of his \$2,000.00 and \$22.75 withdrawals from community earnings by failing to provide his entire bank statements, and his further concealment of the source from which the BMW was purchased by his perjury when he stated he was not ordered to provide a "sworn statement" from the person he claimed loaned him the money to purchase the BMW.

5. The trial court erred in finding additional maintenance to Wife should not be ordered.

As Husband's bank statement entered into evidence (CP 208:19) and in

Appendix A to Appellant's Opening Brief show, Husband's financial picture was not grim like he portrayed it to be at the time of the maintenance hearing.

It was not until his "Response" that anywhere in the record Husband claimed to have incurred "over \$10,000.00 in wedding bills." This false, self-serving unsubstantiated statement, not even claimed at trial, is irrelevant on appeal. On the other hand, Wife produced in evidence at trial proof that it was she who incurred wedding bills, and Husband did not object to admission of that documentation into evidence. (See Trial Exhibit 208:14.) Additionally, at trial, Husband acknowledged that during the marriage, Wife held yard sales, and received proceeds from the sale of her possessions. (1/18/12 RP.)

Husband's "Response" also failed to address the issue of the court being required to "equalize" the standards of living of the parties for a set period as required by In re Marriage of Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984), stating only that an award to Wife of the "full (THREE-MONTH) marriage length" was "unwarranted." This was a marriage where Husband enticed Wife to move 900 miles away from her home to marry him based on false pretenses while he carried on an adulterous affair behind Wife's back, **WHICH 'MARRIAGE' ALSO ENDED AFTER ONLY THREE MONTHS DUE TO HUSBAND'S NEXT ADULTERY.** Clearly, Husband is a con artist of the highest magnitude, conning women into 'marriage' for brief sexual liaisons while he rapes them of their possessions while moving onto his next victim. And he managed to con the court with violations of court orders and perjury that the court, with its budget cuts and time constraints, did not have the wherewithal to

enforce.

Contrary to Husband's false self-serving claim that "to see the dissolution go through was both parties' desire," it was not Wife's desire to have this marriage ended, as her Response to the Petition indicates. (CP 11.) It was not until mid-December 2012, when Wife learned of Husband's adultery, that she wanted the marriage dissolved. In the interim, Husband's dilatory tactics caused Wife a great deal of time and expense away from trial preparation and from finding employment.

Husband's "Response" misstates the record where he states therein that a "3-month extension" of maintenance was granted to Wife. Wife's request for a 3-month "extension" on the original maintenance award of 3 months was DENIED.

In his "Response," Husband again provides only his self-serving statements that he "could not afford [his] bills" as a result of the 3-month maintenance award to Wife that "wasn't enough for Wife to live on," according to Commissioner Paxton. (9/19/11 HP 7:9-10) From Husband's subpoenaed bank records in Appendix A, it is clear that for the entire period of the ordered bank records, Husband had money coming in of approximately \$5,000.00 per month, so he was well able to pay his bills.

Husband provides his self-serving statement alone in his "Response" that Wife was "unemployed several months before" the parties were married, "never participated in paying any bills," and that Wife "never [added] anything to help out." These claims are false, and the burden of proof is on the party claiming them to prove them true. This Husband cannot do. There is no evidence in the

record to substantiate Husband's claims. Wife's bank statements, entered into evidence at trial, show she brought money into this marriage (CP 208:14.)

Wife attempted to present testimony and evidence as to the great disparity in the living standards of the parties to show maintenance awarded Wife did not reflect an attempt to equalize the standards of living of the parties for a set period of time, as required by RCW 26.09.090(1)(c), (d) and In re Marriage of Washburn, 101 Wm.2d 168, 179,677 P.2d 152 (1984). The court would not allow it. (1/20/12 RP 13:12-13, 14:14-18; 15:11-14; 17:19-20; 22:6-8; 31:7-10; 39:11-13), and abused its discretion in failing to issue Findings of Fact to support its conclusion that there was no good cause for a continuance as required by CR 52(a).

Husband's subpoenaed bank records show his standard of living throughout these proceedings was far above Wife's, but that was not taken into account in the original award. Wife's request for additional maintenance required an equalization of the standards of living of the parties, as required by In re Marriage of Washburn, supra.

Contrary to Husband's false claim that Wife "wants money in every pursuit," Wife has been PAUPERIZED by seeking justice in this case, while Husband lavished himself with Wife's personal property and adulterous affairs by obtaining court approval of his requests with lies about his financial status and his expenses that he never substantiated. A marriage dead as a result of a Husband's adultery should not mean that his further deceit should be allowed to cause the death of Wife's financial future. A wife need not pauperize herself by selling her

assets to raise funds necessary to pay the cost of a divorce suit, such as Wife did here. Stibbs v. Stibbs, 38 Wash.2d 565, 231 P.2d 310 (1951). To require her to do so, without allowing her to put on any evidence of attorney fees paid or equitable grounds for payment of her costs or paralegal fees was an abuse of discretion.

6. The trial court erred in denying Wife's Motion for Order Sealing the Court File and Public Access System.

Husband's "Response" failed to provide any factual or legal basis for denying Wife's challenge to the trial court's denial of an order sealing the court file, particularly as to documents from a sealed criminal case Wife which was dismissed in its entirety. (Supp. Designation CP Case No. 13274, CP 215, 216.) Nor did Husband's "Response" provide any legal authority for why the trial court's denial of an order sealing the court file should stand when it failed to provide any Findings of Fact or Conclusions of Law with respect to the Seattle Times v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982) factors it was required to balance in rendering a decision on Wife's Motion to Seal. Nor did Husband provide any factual or legal basis for why his discovery responses (CP 66) should remain published when Rufer v. Abbott Laboratories, 154 Wn.2d 530, 114 P.3d 1182 (2005) held that such documents, never used at trial, nor filed as an attachment or exhibit to any motion, should be sealed for good cause.

In his "Response," Husband again entered on the record unsubstantiated and irrelevant claims about Wife being violent. The criminal case against Wife was dismissed in its entirety without any finding of violence by Wife. Whatever a

commissioner may have stated in a hearing is irrelevant to the fact that the trial judge was required to balance the Ishikawa factors, and issue Findings of Fact and Conclusions of Law thereon, which she did not do. Such failure was an abuse of discretion. Wife has suffered real and substantial harm from Husband's libelous, defamatory and false light statements about her in the court file which the court continues to publish to the public to this day. Husband vaguely, ambiguously, and falsely alluded in his Response that Wife "violently insisted continuously and would not accept the commissioner's (supposed) decision" that the file not be sealed, but ignores the fact that a decision on a motion to seal requires a balancing of the Ishikawa factors after the moving party is allowed to present evidence on the Ishikawa factors. Apparently, any time Wife takes a position that does not concur with that of Husband, he characterizes her opposite position as "violent," because Wife has never been physically violent or threatening toward Husband in her life. Husband just likes to throw that word around and see where it will land to garner him points with those wearing the robes. No finding of violence on Wife's part has ever been found by any court of law anywhere.

After trial, Wife received records containing Husband's social security number, which she has refrained from publishing in this court file like Husband published hers, necessitating a post-trial motion by Wife to have the private information redacted, which motion was granted. (CP 243.) Clearly, it is Husband who has been out to do Wife harm all along, with adultery, with false statements about her, by wrongfully withholding her personal property, by concealing community property assets, and by intentionally publishing her social

security number in the court file.

The trial court summarily denied Wife's motion for Order Sealing the court file without even allowing Wife to present evidence on the Ishikawa factors. Such refusal to hear evidence on the Ishikawa factors was an abuse of discretion.

7. The trial court erred in finding an award of Attorney Fees and Costs to Wife did not apply.

In his "Response," Husband states that "neither of US were attorneys," but nowhere does the law in the State of Washington state a requirement that the party claiming attorneys' fees be an attorney. Moreover, Husband's "Response" ignored the fact that the trial court denied Wife the right to present evidence of the \$180.00 in attorney fees she incurred in a consult with Attorney Nancy Durrell, nor any evidence of equitable grounds for an attorney fee award as a result of Husband's intransigent tactics. In Husband's "Response," he states that Wife filed "hundreds of frivolous papers," but nowhere did the court find that to be the case. Clearly, the record shows that it was Husband who caused the mountain of paperwork this case became, simply because Husband expected Wife to roll over and play dead while he tried to make off with thousands of dollars of her personal property after his adultery.

Wife attempted to present evidence and testimony regarding her need for an award of attorneys' fees and costs, and Husband's ability to pay, but the court would not allow it. (1/20/12 RP 15:24; 16:2.) Pursuant to R.A.P. 18.1, Wife set forth in her Opening Brief a request for attorneys' fees and costs.

Husband's subpoenaed bank records show his ability to pay Wife's

attorney fees and costs, an issue upon which the court was required to issue Findings of Fact, but failed to do so, requiring reversal under RCWA 26.09.140; In re Marriage of Steadman, 63 Wash. App. 523, 821 P.2d 59 (1991). Such failure was an abuse of discretion and reversible error.

The bank records, showing Husband had monthly income of about \$5,000 over the course of this case, demonstrate Husband has had the ability to pay Wife's attorneys' fees and costs incurred herein. Moreover, Husband's intransigence (as set forth in greater detail in Wife's Opening Brief, at pp. 6-8) in bringing 2 frivolous denied motions, and in causing Wife to bring a motion to for maintenance, a motion to compel discovery, a motion for return of her property, and a motion for issuance of 13 subpoenas, all of which were granted, is a basis for awarding fees on appeal, separate from RCW 26.09.140 (financial need.) Chapman v. Perera, 41 Wash. App. 444, 455-56, 704 P.2d 1224 (1985). As Husband acknowledges in his "Response," he made repetitive requests for sanctions against Wife. The material fact he omitted was that all those requests were found baseless and improper, and none of them were granted. (See, e.g., CP 82.) Washington courts have found intransigence as a basis for attorney fees when a party engages in obstructive behavior or delay tactics, files unnecessary motions, or participates in other activities that make trial unduly difficult or that increase legal costs unnecessarily, e.g., In re Marriage of Foley, supra; In re Marriage of Crosetto, supra; In re Marriage of Greenlee, supra. The record shows Husband's conduct on the trial court level constituted intransigence, including 1.) his failure and refusal to provide documentation related to community finances at

the 9/6/11 hearing on Wife's Motion for Maintenance, which had to be postponed until 9/19/11, and was granted (CP 27), 2.) his frivolous Motion for Modification of Maintenance awarded Wife, which was denied (CP 34), and where the court found that Husband made more than he claimed (10/3/11 HP 5:14-15, 3.) his wrongful withholding of Wife's personal property for over 5 months, which necessitated Wife's motion for its return, which was granted (CP 82), 4.) his failing and refusing to provide discovery responses, which necessitated Wife's Motion to Compel, which was granted (CP 82), 5.) his failing to provide his ordered bank records in full, which necessitated Wife's Motion for Issuance of Subpoenas, which was granted (CP 148), and 6.) his bringing a frivolous request for a restraining order, which was denied (Supp. Designation of CP: Case No. 11 2 01447 1.) Husband's obstruction of Wife's trial preparation by his aforementioned frivolous filings and delay tactics warrants an award of attorneys' fees and costs to Wife.

Husband was ordered to provide Wife with his bank records for the period three months prior to the marriage through the Statement for October 2011. (CP 82.) He was also ordered to provide a "sworn statement" from the person he claimed loaned him \$2,000 to purchase the BMW (11/14/11 HP 24:7-11.) In order to hide his \$5,000 in monthly community earnings, to hide his \$2,000 withdrawal just prior to the BMW purchase, to hide the true cost of the BMW (excluding Husband's self-serving statements alone that the trial court used to conclude that Husband had purchased parts for the BMW with his separate funds), to hide his earnings for the period order to avoid an award of additional

maintenance to Wife and attorneys' fees to Wife, Husband only supplied to Respondent the face sheet from his bank statements, stating only the total of his deposits and withdrawals, and he never provided the "sworn statement" from the supposed lender. These bank statement face sheets alone, without the remainder of the statements, concealed the community nature of the funds used to purchase a BMW during the marriage, and concealed Husband's income level for the same period. (CP 148) Hence, at great time and expense to Wife, who has been indigent throughout these proceedings, Wife was forced to research, prepare, appear at motion on, and seek fee waivers for issuance of a subpoena for the itemized bank records for the same period, which subpoena was not granted until 1/3/12 due to Husband's dilatory tactics as set forth in Wife's Opening Brief. For purposes of distributing property during a dissolution proceeding, the court can exercise its equitable powers and evaluate whether Husband concealed community assets. In re Marriage of Kaseburg, 126 Wash. App. 546, 108 P.3d 1278 (2005).

About 7/1/12, due to her indigency, the time and expense necessitated by this case, and her inability to find employment in Washington, Wife was forced to move to Missouri where she has family. While Wife recently secured full-time employment in Springfield, Missouri, with the debts she incurred as a result of this case, she cannot, without an award from the Court of Appeals, pay travel costs from Missouri to Washington and back to appear at a new trial in this case, but a new trial is requested as set forth in Wife's Opening Brief.

Wife requests a determination of the amount of attorney fees Wife should

be awarded based upon the court making specific determinations as to Wife's need, and Husband's ability to pay.

C. Conclusion

Wherefore, Wife Respectfully requests that the court order as follows:

1. issue declaratory relief in the form of an order declaring that Husband's self-serving statements related to an alleged \$2,000 loan be excluded from its decision with respect to the community nature of the BMW purchased during the marriage;
2. Reverse the trial court's denial of Wife's Motion for Continuance of Trial, and remand for new trial those portions of the case related to:
 - a. community liability for the dog bite, with instructions that Wife be allowed reasonable time of at least two months to subpoena the dog bite victim;
3. Award Wife her community share of the \$3,800 Husband received in from the sale of the BMW in violation of the restraining order in effect in this action, plus a monetary sanction for Husband's concealment of assets from the sale and violation of a restraining order in the sale, and violation of the court order that he provide Wife with a "sworn statement" the person he claimed loaned him money to purchase the BMW;
4. Award Wife additional maintenance in the amount of \$12,000.00, representing a 6-month equalization of the parties' standards of living, including the 3-month duration of this marriage, plus an additional 3-month period for time Husband's intransigent and dilatory tactics unnecessarily delayed these proceeding, based upon one-half of Husband's \$5,000.00 monthly income, which

total award includes a \$3,000 offset for the \$3,000 Husband already paid Wife
(\$5,000.00 x 6 mos. = \$30,000 x ½ = \$15,000.00 - \$3,000.00 = \$12,000.00);

5. Order that all documents from the closed criminal case, and Husband's discovery responses, which Husband placed in the court file, be redacted from the court file and public access system, and that portion of the case related to libelous, defamatory and false light statements Wife claims Husband made about her in the court file be remanded to the trial court for a determination on the merits of whether such statements meet the Ishikawa standards; and

6. Reverse the trial court's finding that Attorney fees are not applicable, and instruct Wife to Prepare a Statement of Financial Need and a Memorandum of Fees and Costs by a set deadline for the Court to ascertain the amount to award Wife.

Dated: March 4, 2013

Respectfully submitted,



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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAR -7 PM 1:21

COURT OF APPEALS, DIVISION I, OF THE STATE OF WASHINGTON

In re the Marriage of:)	Skagit County Case No. 11-3-00512-3
)	Court of Appeals Case No. 68433-7
BRAD BART BROWN,)	Washington Supreme Court Case No. 87575-8
)	
Respondent,)	Proof of Service by Mail
)	
v.)	
)	
LUCY MARIE BROWN,)	
)	
Appellant.)	

I, Joshua Coffman, hereby declare:

1. I am over the age of 18 years, and not a party to this action.
2. On March 4, 2013, I served by U.S. mail upon Respondent Brad Bart Brown, 2034 K Avenue, Anacortes, WA 98221, the following:

Appellant's Reply Brief

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information and belief, and that this Proof of Service was signed at Springfield, Missouri on March 4, 2013.

Joshua Coffman
Name: Joshua Coffman
Address: 2010 E Page St Apt C-14 Springfield, MO 65802
Phone: 417-207-1022