

No. 74405-4-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Marriage of

HILLERY LORE NYE LEE  
Appellant

and

RALPH BRYAN LEE  
Respondent

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FILED  
September 1, 2016  
Court of Appeals  
Division I  
State of Washington

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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APPELLANT'S REPLY BRIEF

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## I. INTRODUCTION

Nye has challenged in general and in many particulars the court's orders effecting a dissolution of this short-term marriage. Admittedly, the trial court labored under less than ideal circumstances: a pro se litigant, poor financial record-keeping by the couple, and inadequate evidence, particularly as presented by Lee in support of his factual assertions. Here, similarly, Lee's brief fails to address the legal issues engaged by Nye's challenges, including the requirements to consider all relevant factors, to characterize the property consistent with Washington law, and to consider all the property (community and separate). He also merely repeats – without record citation – factual claims the evidence simply does not support. An effort has been made to consolidate the arguments and factual corrections; no reply is offered where Lee fails to address an issue. Altogether, the individual errors and the aggregate disproportionality of the distribution, compounded by the irregular treatment of post-trial submissions, require remand.

## II. STATEMENT OF ISSUES IN REPLY

1. The court does not have discretion to forego consideration of “all relevant factors” (RCW 26.09.080) governing dissolution.
2. Entry of findings of fact and conclusions of law is required.
3. The court must find a distribution to be “just and

equitable,” and here it did not and it is not.

4. The court double-counted assets in making the final distribution, or treated assets inconsistently, resulting in an arithmetically incorrect additional award to Lee.

5. The trial court made errors in characterization that affected the distribution (e.g., Vashon lot, engagement ring).

6. The court should not have relied on post-trial submissions by one party only, especially as they did not meet evidentiary requirements.

### III. ARGUMENT IN REPLY

#### A. THE DISTRIBUTION WAS NEITHER JUST NOR EQUITABLE AND THE COURT MADE NO FINDING TO THE CONTRARY.

Lee fails to address the law’s requirement that the trial court make findings of fact and conclusions of law and otherwise make clear on the record the analysis supporting its decision. See Br. Respondent, at 9; see, also Br. Appellant, at 23-24. He claims the court’s spreadsheet suffices to explain the court’s distribution and he fails entirely to respond to the court’s failure to find the distribution to be just and equitable.<sup>1</sup> Lee argues

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<sup>1</sup> Lee describes how “each of these items [in the spreadsheet] had been previously discussed in detail during the court proceedings. And where relevant each party presented the case law which it felt was most relevant to each individual asset or liability.” Br. Respondent, at 9. He does not provide record citations demonstrating this claimed nexus between each item and the evidence or legal argument, and as Nye has argued, often there is no such evidence. In any case, the spreadsheet represents merely

the court is free to do pretty much whatever it wants to reach a desired result. See, e.g., Br. Respondent, at 7, 10. In fact, the court does not have the discretion to ignore the law's requirements. See Br. Appellant, at 23-25. Rather, the court must consider the statutory factors, including how those factors have been interpreted, and must make findings on the record demonstrating it has done so; these findings must be supported by substantial evidence which, in turn, supports the court's conclusions.

The court did include as notes to the spreadsheet, some of its reasoning as to particular assets and, at one point, the court indicates an intent to accomplish an equal division. RP 565-566. However, it did not accomplish that, apparently because of errors discussed further below (e.g., computational error, characterization error).

Lee argues the court's distribution accords with suggestions offered by Judge Windsor, essentially that spouses in short term marriages be put in the same positions as they were before they married. Br. Respondent, at 7-8, (citing Windsor, *Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions*, Washington State Bar

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the result of the court's valuation, characterization, and distribution; it does not describe the process by which the court got to that result – how it resolved legal and factual disputes. The question of the adequacy of the findings is fully briefed at Br. Appellant, at 23-25.

News, Vol. 14 (January 1982)). This argument runs into several substantial obstacles.

First, the court made no findings regarding the parties' respective financial positions prior to marriage, and Lee cannot put words in the court's mouth. See, e.g., Br. Respondent, at 8 (claiming he had a net worth of three million and Nye had a net worth at or below zero); see, also Br. Respondent, at 2 n. 2 (citing Nye's testimony that her school debt was "a wash in cash"). According to the record, Nye had a house and an income-generating law practice and little consumer debt. RP 182-83, 152, 269. Lee had a house and claimed to have had substantial "unrealized gain." RP 43, 57-58. He never provided any evidence to prove these financial claims – no tax returns, no bank statements, etc., which may explain why he fails to cite to the record to support the arguments he makes here.<sup>2</sup> RAP 10.3(a)(5) ("[r]eference to the record must be included for each factual statement"). Moreover, he never acknowledges that he also had many more obligations – including very substantial family support obligations to his ex-wife and to his children -- or that he quit his job. RP 14 -18, 21-22, 50, 80, 172; Ex. 15.

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<sup>2</sup> He simply cites to testimony where Nye confirms figures he wrote down on a whiteboard and that his net worth figures were consistent with the representations he made at the beginning of the marriage; this was not an admission of the truth of the facts he asserted. See RP 271-72. Lee later relies on the value of Nye's law practice, tacitly acknowledging that her net worth included more than the sum of her cash-versus-student loans.

Moreover, however sound Judge Windsor's advice, the premise is missing in this case: solvency. These parties cannot be returned to their premarital financial circumstances. By 2009, they were basically broke (though Nye did not know that until 2010, RP 161, 166); for the next four years, they lived off Nye's income and loans. See Br. Appellant, at 14-16. As the trial court understood, it was essentially distributing debt. RP 565-566 ("We have to get you through this boatload of debt. My goal is to try to divide this as equally as I can.").

In any case, the law does not require a trial judge to follow Judge Windsor's suggestion, even where it is possible. Rather, the law requires the trial court to fashion a distribution that is "just and equitable," accounting for all the relevant facts and factors. That did not happen here. Certainly, the court could not take Judge Windsor's advice to mean that Nye has to rebuild Lee's fortunes, even if it bankrupts her.

Nor can Lee's arguments for why he thinks the outcome is just and equitable suffice. The court did not adopt his reasoning, nor does the evidence support it doing so. For example, without citation to the record, he complains he paid all of Nye's debt without getting any credit in the spreadsheet. Br. Respondent, at 10. First, he misunderstands the court can distribute only existing assets and debts; it does not do an accounting of the marriage. Second, he ignores the evidence of the community's

contribution to his obligations (e.g., to his first ex-wife and children, his housing expense, etc.) – that is, Nye’s income and loan proceeds kept them afloat. Yet, he also claims he “provided the vast majority of the couple’s funds over the duration of the marriage,” Br. Respondent, at 3, but again offers no record support. In fact, the record is clear that he was largely unemployed during the marriage and his “unrealized” wealth was gone just two years into the marriage – much of it due to market forces, not community spending. See Br. Appellant, at 12-14.

That is, in his “just and equitable” argument, Lee ignores what he otherwise concedes: that he lost significant value (on paper, apparently) because of economic forces beyond the control of either party, a fact the court also acknowledged. RP 563. When he does concede these “unfortunate events,” he also blames Nye but somehow escapes all responsibility himself (Br. Respondent, at 2), an evasion the record does not support. See Br. Appellant, at 13, 15-16, 12 (noting Lee made substantial family support payments to his ex wife, invading assets and going into debt to do so; incurred approximately \$9,000 in legal fees for litigation with his ex-wife; paid \$5,000 toward college tuition with money set aside for taxes without telling Nye; and remained unemployed while his investments tanked). Judge Windsor would not think Nye needed to compensate Lee for losses he suffered due to economic forces and his own

financial decisions. If anything, application of that principle here would mean that Lee takes more of the debt than Nye, in proportion to their positions at the beginning of the marriage – they would end up with a debt ratio similar to their asset ratio.

In sum, the court did not make a finding that the distribution was just and equitable or otherwise fulfill its duty to review all the relevant factors on the record. This exercise may well have led the court to recognize how poorly the result served the purposes our law identifies as guiding the distribution of assets and debts at dissolution.

**B. THE NUMBERS DO NOT ADD UP AS LEE CLAIMS THEY DO; IN FACT, SOME DO NOT ADD UP AT ALL.**

Lee makes various factual claims that are expressly rebutted by the evidence, examples of which are addressed below. (Because Lee rarely supports his assertions with record citations, refutation is painstaking and, for that reason, is undertaken selectively.)

Double Counting

In several places, Lee attempts to refute that the court awarded several of the assets twice (i.e., double counted them) – once in the spreadsheet and below the spreadsheet in the calculation of the transfer payment. Br. Respondent, at 7, 11. The fact is, these assets do appear in two places– counted first to arrive at totals for community and separate assets and debts, split 50/50 between the parties (to arrive at a marital lien

of \$101,246 owed by Nye to Lee), then counted again to increase the transfer payment from Nye to Lee by \$145,672 to a total transfer payment of \$246,918. CP 197-198.

Lee argues the second counting is necessary because he did not receive the assets (i.e., Madrona Law Group, ATT Lease Payments, and the engagement ring). Br. Respondent, at 5-6. Of course, the ring (overvalued as it is) was not awarded to anyone. CP 183-186, 193 (Exhibit H), 195 (Exhibit W). It no longer existed.<sup>3</sup>

In any case, if the court intended this mechanism as Lee suggests, it needed to use it consistently, and it did not. For example, the court split the \$332,000 Davis Wright Tremaine (DWT) debt between the parties on the spreadsheet (-\$166,000 to each), but only Nye is obligated on this debt.<sup>4</sup> CP 196. In other words, Nye owes DWT \$332,000, but the amount is split between the parties on the spreadsheet, arriving at the marital lien of \$101,246. To be consistent with Lee's analysis, half this amount would again be counted below the spreadsheet (-\$166,000), same as with the

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<sup>3</sup> The same is true of the past lease payments; the decree awards the "Vashon lot and all leases," but does not mention the post separation rents included in the spreadsheet. CP 193. The Madrona Law Group is to be "split equally" between the parties, as is the DWT debt. CP 195-196.

<sup>4</sup> Post-trial, Lee claimed the DWT debt was \$544,025, which is why Nye had to voluntarily dismiss her bankruptcy petition. See, below, at 14.

three net-positive assets, thereby substantially reducing the transfer payment ( $\$246,919 - \$166,000 = \$80,919$ ).

Alternatively, the total of these assets and liabilities could be placed in the columns on the spreadsheet consistent with the party to whom they are awarded, rather than being split on the spreadsheet, then split again for the marital lien, then added back below the spreadsheet. Instead, the court could simplify the computation as shown on the attached illustrative spreadsheet (i.e., placing all three net-positive assets and the DWT debt in her column), which results in a marital lien of  $\$66,349$ .<sup>5</sup> When six months of ATT lease payments are added to this figure, the result is  $\$80,919$ . In other words, consistent treatment of the assets and liabilities by either mechanism leads to the same result.

Whether you call it double-counting or mis-counting, the fact is the court's computation treats these assets and liabilities inconsistently without any rhyme or reason. Alone, correcting this arithmetical error dramatically reduces Lee's transfer payment.

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<sup>5</sup>This figure does not include the ATT lease payments from the six-month bankruptcy stay, which the court calculates below the spreadsheet to be  $\$14,569$  (the  $\$11,994$  from the spreadsheet plus the  $\$14,569$  from the intervening six months =  $\$26,563$ , the figure appearing below the spreadsheet in the section described as "Reimbursements owed party-to-party outside the division of community property" CP 200). The court's calculation of these payments does not seem to account for taxes, etc., just for the record.

### Distribution of Debt

Lee claims Nye received more of the community assets and he received more of the community debt. Br. Respondent, at 9. Again, Lee ignores the DWT debt, which exceeds his share of the community debt by about \$100,000, meaning Nye takes the lion's share of the community debt. Moreover, he ignores the overall distribution – community and separate – which results in Nye paying Lee nearly \$250,000. This is the big picture the court must consider according to the statute. Certainly, it does not leave the parties in equal positions .

### Nye's "Improved" Position Post Bankruptcy Filings.

Lee claims the court initially intended a more disproportionate distribution than it ultimately ordered, what Lee describes as “a preliminary estimate” that “would have resulted in the same awarding of assets and debts ultimately awarded by the court plus a final transfer payment from wife to husband of \$614,168.” Br. Respondent, at 3; see, also, Br. Respondent, at 4, 19 (“the final cash award of \$246,918 was actually \$367,250 better for wife than the preliminary and confirmed initial estimate of \$614,168”). Lee offers no record citation for this claim, but he seems to be comparing his calculation of the court's preliminary spreadsheet. CP 119; see CP 253 (Lee identifying the court's preliminary spreadsheet and how he returned his re-calculated spreadsheet to the

court). The court made a number of changes in the preliminary spreadsheet, including omitting from it the outstanding mortgage on the Madrona house (\$762,282), in recognition that the bank would foreclose on the house. CP 200. This correction accounts for most of the difference between the two spreadsheets. The other changes strongly disadvantaged Nye: inflating the value of the engagement ring (from \$21,000 to \$106,150) and omitting from Nye's side debt she owes to family (\$55,000), though Lee retains a credit for \$136,515 of family debt. CP 197-198. All told, and not counting the Madrona mortgage, Nye came out worse after the court took Lee's post-trial submissions at face value.

#### C. POST-TRIAL SUBMISSIONS (BANKRUPTCY)

Lee concedes the court relied upon his post-trial submissions related to the bankruptcy in its final orders. Br. Respondent, at 18. And he repeats here what he told the trial judge the bankruptcy submissions signify. See, e.g., Br. Respondent, at 11, 16, 17 (they were all part of her filing, attested to, part of public record, or contradicted her prior testimony). He also repeats the accusation that Nye "knowingly filed [for bankruptcy] in violation of the most basic requirements." Br. Respondent, at 17. Lee offers no authority for his assertions and completely ignores the evidentiary problems raised by his submission and by the court's reliance on it. See *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809,

828 P.2d 549 (1992) (court does not consider arguments unsupported by citation to authority). These legal issues are addressed at Br. Appellant, at 38-45 (e.g., unsworn declaration, evidence of ring appraisal illegible and does not represent present fair market value, no foundation). The trial court cannot take Lee's word for what this evidence is or what it means; it must abide by the rules of evidence. Those rules were ignored. If the court wanted to consider any post-trial evidence, it needed to do so in compliance with the rules, essential to an accurate and reliable fact-finding. It also needed to be even-handed in this effort (i.e., consider Nye's submissions, as well). These defects in the process undermine the result reached.

Contents of Lee's Submission.

Lee claims the documents he submitted post-trial were all part of Nye's bankruptcy filing, sworn by her, made part of the public record, and inconsistent with her prior testimony. Br. Respondent, at 11, 16, 17. Notwithstanding the problems with authenticity, legibility, hearsay, notice, etc., these submissions are not what Lee claims. For example, the ring appraisal was not something Nye provided the bankruptcy court; it was something Lee produced for the first time in his post-trial declaration. CP 257. What Nye claimed in the bankruptcy court as the value of the ring was completely consistent with her testimony. See RP 484 and CP 292.

Lee also asserts that the bankruptcy filings “made clear that her asserted sales price for the engagement ring was not an arms-length market based prices [sic] as she had testified.” Br. Respondent at 17. As clarified in the Appellant’s Opening Brief, this is a misrepresentation of her testimony about the ring, as borne out in the trial transcript. Br. Appellant, at 40-41.

Likewise, the mention in the bankruptcy proceeding of the Blue Box warrants is not sinister, as Lee claims. At trial, Nye explained how these warrants had no present value. RP 476-77. Later, after she filed for bankruptcy, the bankruptcy trustee mentions Nye has “indicated that IBM purchased the startup Blue Box so that she received or will receive approximately \$51,160.12.” CP 282 (emphasis added). This hardly counts as proof that Nye received these funds. Moreover, as it turned out with this fluid asset, the warrants were canceled as part of the sale to IBM; Nye agreed to relinquish all equity in Blue Box as part of the sale. CP 159. If anything, the confusion around the warrants issue reinforces the need for the court to hold a supplemental hearing – applying the rules of evidence – if such additional evidence is deemed necessary.

#### Timing of Bankruptcy Filing.

Lee insinuates that the timing of Nye’s bankruptcy filing suggests an effort to obstruct the court’s issuance of its final orders. He claims the court had arranged a conference call on March 13, 2015 to “verbally

present the findings and the final order,” but the court “was stayed in its issuing its final rulings” due to Nye filing for bankruptcy on that same day. Br. Respondent, at 3. Again he provides no citations to the record, simply noting “the call was documented by the court reporter.” Br. Respondent, at 3. In fact, as noted in the Appellant’s brief, the court’s bailiff simply alerted Nye’s attorney and Lee that the court wanted to schedule a call “with both of you,” with no mention of the purpose of the call, after both parties emailed the court to dispute the court’s proposed spreadsheet. Br. Appellant at 18-19, n. 6 (citing CP 112). There was no indication in the record that the court intended to issue its ruling at that time. At the time of the court’s call, both parties had submitted to the court conflicting versions of the spreadsheet. It seems likely the court was seeking to address those conflicts, not merely to issue a final order (for which no conference call is needed). Lee’s assertion must be rejected as unsupported by the record. Even pro se litigants must abide by the requirements of supporting assertions and arguments with appropriate citations. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

Bankruptcy Filing in Bad Faith.

Lee’s repeated effort to malign Nye by these unsupported claims about the bankruptcy violate other rules as well. *See, e.g.*, CR 11;

*Trohimovich v. State*, 90 Wn. App. 554, 952 P.2d 192 (1998). In addition to his claims about the timing of the filing, Lee accuses Nye of a bad faith filing because the DWT claim of over \$544,000 was never disputed and it alone pushed her claim over the filing limit. Br. Respondent at 4. But as the record demonstrates, at the time Nye filed for bankruptcy (shortly after trial), she had a good faith belief that it complied with the filing requirements. After all, the trial court had settled preliminarily on a \$332,000 gross value for the debt. CP 129. See, also, RP 239, 243 (Nye’s testimony about its value). Lee repeatedly characterized the DWT debt as “illusory,” and was confident that the firm would not pursue the collection, testifying that DWT had told him it had written off the bill internally and would not pursue collection. RP 356, 366, 378, 441, 535-36. Thus, it is disingenuous for him to now argue that her bankruptcy filing was made in bad faith for undervaluing this debt.<sup>6</sup> Indeed, if there was any bad faith filing, it was Lee’s last minute filing in the bankruptcy court for a claim of \$822,168 representing that he was owed this amount in the dissolution, substantially exceeding what the court had circulated as a preliminary estimate.

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<sup>6</sup> Interestingly, if the amount DWT claimed in the bankruptcy court is adopted by the trial court, then Lee owes Nye a transfer payment of \$131,081 (i.e., when -\$544,000 is placed in Nye’s column).

D. THE TRIAL COURT'S MISCHARACTERIZATION OF CERTAIN ASSETS AND ITS FAILURE TO CONSIDER ALL PROPERTY IN ITS ANALYSIS ARE LEGAL ERRORS.

Lee does not address Nye's arguments about the court's legal errors in omitting and mischaracterizing property. See Br. Appellant, at 27-37. He simply states the court considered separate and community property, as indicated by the columns on the spreadsheet. Br. Respondent, at 11 ("frankly difficult to understand Appellant's assertion"). Nye's point is that the statute requires the court to consider all these assets in the totality, meaning how the distribution of these assets serves the overall purposes of the statute. Here, the court seemed to segregate the separate property from the community property, as if the separate property was not part of that analysis. This is error, and it is an error compounded by the errors in characterization, including, significantly, the error in characterizing the Vashon lot. See Br. Appellant, at 26-27.

Lee acknowledges the Vashon lot was acquired during the marriage. Br. Respondent, at 12. But he ignores the legal significance of that fact. He argues that "while wife would like for the mere of act of marriage to create an automatic co-mingling of assets, the law does not support this notion," with no citation to authority. Br. Respondent, at 12. Though his statement is overbroad, it does suggest the controlling principle: marriage gives rise to a presumption that property acquired

during the marriage is community property. *In re Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995). The party challenging that presumption has the duty to rebut it, meaning, here, it was Lee's burden. *In re Marriage of Mueller*, 140 Wn. App. 498, 504, 167 P.3d 568 (2007) ("this heavy presumption" may only be overcome with clear and convincing evidence). Yet Lee claims the opposite, citing case law that "the burden is on the party espousing that separate property has been converted into community property to prove the transfer by clear and convincing evidence, usually requiring written consent." Br. Respondent, at 13. But Nye does not claim the property was converted from separate property to community property. Rather, the issue here is the character of the property at acquisition. Again, because the property was acquired during the marriage, the presumption of community property attaches to it. Lee must rebut that presumption, which he failed to do. See Br. Appellant, at 33-34.

Rather than carry that burden, Lee merely claims there is no dispute the property was acquired with his separate funds. Br. Respondent, at 12. Again, he does not cite to the record. The only evidence of his claim is a withdrawal slip (actually, an email purporting to contain a copy of the withdrawal slip) he produced on the eve of trial. RP 354, Ex. 261. The withdrawal slip does not establish the character of the

funds or even where they were applied. Lee did not prove the source of the funds represented by the slip (no bank statements)<sup>7</sup> or that they were paid to anyone for anything; certainly he did not produce a check payable to Nye's mother for the purchase of the lot. Additionally, there was evidence that Nye also had sufficient separate funds available to make the purchase. RP 142-43. Overall, the evidence at trial depicted a couple whose financial dealings were utterly entangled – money flowing freely from one account to another with no effort to maintain any distinction or accounting. Washington law requires more than a copy of a withdrawal slip to overcome the “heavy presumption” in favor of community property. *Mueller*, 140 Wn. App. at 504 (clear and convincing evidence required to establish “no question” of separate character). Because the property was acquired during the marriage, the burden is on Lee to show it was acquired with funds that could be traced to his separate property. He failed to meet this burden. See Br. Appellant at 32-34 (proper tracing “entails the use of records, documents and testimony to show the source of funds and their expenditure”)

Lee also argues, without citation to the record or to authority, that Nye's exclusive option to purchase the lot “was dismissed by the trial

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<sup>7</sup> The only bank statement he provided for 2007 was for December 2007 which did not reflect this withdrawal; this withdrawal was supposedly made in November 2007. Ex. 248.

court” because it did not meet the minimum requirements for an enforceable real estate option. Br. Respondent, at 14. The court made no finding or conclusion of this sort, as far as the record reveals to Appellant. In any case, enforceability is not the issue here; the issue is characterization, and Lee does not explain how the option’s enforceability alters the fact that the lot was acquired during the marriage for the express benefit of the community. See Ex. 206.

Characterization is also a problem with Nye’s HELOC debt. Lee says that the money was not used for community purpose, just for legal fees arising from litigation over Nye’s predecessor law firm, MediaTech. Br. Respondent, at 14 (no record citations). Actually, only “some” of the HELOC funds went to this purpose; some also went to start up the successor firm, Madrona Law Group, and to pay debts to Lee’s family. RP 184, 186, 235; Ex. 21. Here, again, the entangled nature of the couple’s finances does not support characterizing this liability as Nye’s separate property.

Even if there was an accounting of how much of the HELOC went to pay the MediaTech (Nye v. Hughes) legal fees, Lee’s claim that this obligation was separate also lacks record support. See Br. Respondent, at 14 (firm was started before the marriage and “was owned separately by wife throughout its duration”). Br. Respondent, at 14. The firm supplied

income to the couple during the marriage, see Ex. 138, the lawsuit (as an asset) occurred during the marriage, and the legal fees were incurred during the marriage. Indeed, the community worked together in the effort to recover from Nye's former law partner. See, e.g., RP 239 (Lee did all the forensic accounting, helped with lawsuit strategy); RP 242-43 (Lee testified at arbitration); RP 348 (Lee acknowledged that "we put our faith in the system and in this case it just didn't work," and that "while people almost laughed at us that we spent so much in pursuit of it... we were trying to focus on realizing a gain"). Whether or not the law firm had a separate character, the lawsuit was community property. Certainly, the proceeds and costs of the litigation were completely commingled with the rest of the parties' assets and debts. Thus it was community debt just as income from the firm during the marriage was community property. Lee offers neither evidence nor authority to the contrary.

Finally, Lee makes no response to the legal issues related to the engagement ring, but merely repeats that the court is allowed "to apply its own judgement [sic] and discretion to its allocation of assets and liabilities and to do it's [sic] best to return the parties to their pre-marriage state." Br. Respondent, at 15. The ring was Nye's before marriage, so, by Lee's argument, it should be her separate property. The court improperly characterized the ring as community property when the evidence was

undisputed that it was given to Nye as a gift before the marriage. Br. Appellant, at 36 (citing *Spinnell v. Quigley*, 56 Wn. App. 799, 801, 785 P.2d 1149 (1990)). Lee provides no authority holding to the contrary.

#### E. IMPROPER DISTRIBUTION OF VASHON LOT & RING

Lee appears to misunderstand the argument regarding distribution of these assets, responding simply that it is “redundant” with the characterization argument. Br. Respondent, at 15. It is not. See Br. Appellant, at 37. As to the Vashon lot, Lee merely states that the court “determined that this property was a separate asset owned by the husband” (Br. Respondent, at 15), which is, of course, the beginning of the problem: the court mischaracterized the property and then distributed it as if characterization controlled, without regard to other “relevant factors.” Lee claims “the property’s physical proximity to another property owned by the wife is of no relevance to the determination of ownership.” Br. Respondent, at 15. But ownership is not the only issue. Even if the property is separate property, which it is not, that fact does not control distribution. *Konzen v. Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985); *In re Marriage of Larson and Calhoun*, 178 Wn. App. 133, 313 P.3d 1228 (2013). Rather, the court must consider “all relevant factors” when making its overall distribution. RCW 26.09.080. Certainly, these are relevant factors: that the Vashon Lot is contiguous to Nye’s residence, it is

part of a larger and long-term family ownership on Vashon, it came into the couple's ownership precisely because of this family significance, and the two properties are used together. Here, the court awarded the property to Lee simply because it characterized it as his separate property. This is error.

Finally, Lee ignores the problem of omitted assets, except for the ring, about which Lee says only that the date of separation is the relevant date. Br. Respondent, at 16. He offers no citation to authority, including authority that would explain how this assertion alters Nye's analysis. See Br. Appellant, at 39, 46. The fact is the ring was gone by the time of trial, exchanged for \$21,000 in legal services.

#### IV. CONCLUSION

Ultimately, Lee does little to address the legal issues Nye raises and he fails to cite to the record when he makes factual assertions; from what Appellant can tell, the record does not provide support for those assertions. For the reasons stated above and, Nye asks the trial court's orders be reversed and remanded for correction of these errors and for the other relief identified in Appellant's Opening Brief.

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Respectfully submitted this 1st day of September 2016.

/s Patricia Novotny, WSBA #13604

/s Nancy Zaragoza, WSBA #23281

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Attorneys for Appellant

**IN RE MARRIAGE OF LEE**

ASSETS & DEBTS DISTRIBUTED BY THE COURT		Notes	Gross Value	Lien & Encumbrances	NET VALUE	TO WIFE		TO HUSBAND	
						COMM	SEPARATE	COMM	SEPARATE
1	REAL ESTATE				0				
2	Seattle House - 1010 Madrona	(1)	1,200,000	1,962,282				0	
3	HELOC - Seattle House (EX 235)			200,894	-200,894				-200,894
4									
5									
6	Vashon House - 9922 1112th St SW	(2)	385,950	313,623	72,327		72,327		
7	HELOC - Vashon House			100,000	-100,000		-100,000		
8	Assumed foreclosure or short-sale								
9									
10	Vashon Other Property (original purchase price) (EX 261)		55,648		55,648				55,648
11	ATT Lease (attached to Vashon Other Property) (EX 210)		152,352	0	152,352				152,352
12	Rents Since Separation on Vashon (less taxes and utilities)		23,987		23,987	23,987			
13	Madrona Law Firm PLLC (at time of separation)	(6)	188,670	Discounted 30%	132,069	132,069			
14									
15	LIQUID ASSETS ON HAND								
16	Cash in HLN Key Bank Account		5,858		5,858	5,858			
17									
18	HOME FURNISHINGS								
19	Madrona Furnishings Purchased by Husband (\$100,000 original; \$10,000 garage sale value)	(3)	10,000	0	10,000				10,000
20	Pianos	(4)	5,000	0	5,000				5,000
21	Vashon		1,000		1,000		1,000		
22									
23	AUTOMOBILES								
24	2009 Mini Cooper (EX 233)		11,852		11,852	11,852			
25	2007 Honda Minivan (EX 233)		15,804		15,804	15,804			
26	2001 Mercedes s500 (EX 233)		4,686		4,686				4,686
27	1973 Mercedes 450SL		500		500			500	
28									
29	JEWELRY								
30	Engagement Ring (Appraisal Value)		106,150		106,150	106,150			-
31									
32	DEBTS - GENERAL UNSECURED								
33	Comcast (EX 165)			1,125	-1,125				-1,125
34	Dr. Wall (EX 237)			5,150	-5,150				-5,150
35	Christine Bogard (EX238)			1,980	-1,980				-1,980
36	Key Bank Overdraft Protection (EX 239)			35,054	-35,054				-35,054
37	USAA Credit Card			1,500	-1,500		-1,500		
38	DWT debt (EX 58 & 262) includes 0 interest			332,000	-332,000	-332,000			0
39									
40	DEBTS - FRIENDS AND FAMILY								
41	Ralph and Donna Lee (EX 271)			76,515	-76,515				-76,515
42	Michael Johnston (EX 191) (Originally \$60,000)			25,000	-25,000				-25,000
43	Larry Johnson (household)			0	0				
44	Hita and Karl Crane (household) (post- separation - not part of marital estate; not listed in bankruptcy)				0				
45	Hita and Karl Craine (W personal loan)(post separation - not part of marital estate; not listed in bankruptcy)				0				
46	John Connors (H personal loan) (post separation - not part of marital estate; not listed in bankruptcy)				0				
47	TAXES								
48	Unknown			0	0				
49	2012 Husband Income Tax			0	0				
50	Unknown			0	0				
51	2011 Wife Income Tax (EX 124)			31,559	-31,559	-31,559			
52	2012 Wife Income Tax			0	0				
53	2013 Wife Income Tax			62,000	-62,000	-41,667	-20,333		
<b>TOTALS</b>			<b>2,167,457</b>	<b>3,148,682</b>	<b>-275,544</b>	<b>-111,006</b>	<b>-47,006</b>	<b>-243,703</b>	<b>126,171</b>
ASSETS & DEBTS						TO WIFE		TO HUSBAND	
						COMM	SEP	COMM	SEP
						<b>MARITAL LIEN</b>			
Husband's percentage (entered by user) 50%						Each party's total dollars		-177,354	
Wife's percentage (entered by user) 50%						Each party's percentage		50%	

Total Community Property  
Half of Total Community Property

Properties subject to computational error are highlighted.