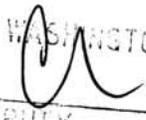


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STATE OF WASHINGTON

DEPUTY

JEANNE HARRIS,

Appellant/Cross-Respondent,

vs.

ROGER KELL,

Respondent/Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR COWLITZ COUNTY
THE HONORABLE MICHAEL EVANS

REPLY BRIEF OF CROSS-APPELLANT

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STATUTES

RCW 19.52.0201

I. INTRODUCTION

Kell asks this court to affirm the trial court's decision in its entirety and to award attorney fees to him for having to respond to Harris's appeal. Kell only asks this court to correct the trial court's errors in failing to award statutory interest on the judgment awarded to him, and in ordering him to reimburse Harris for "rent" for the time the parties lived in Harris's separate property home while paying the mortgage with community funds if it remands to the trial court on any of the issues raised by Harris.

II. CROSS-REPLY ARGUMENT

A. **The Trial Court Had No Discretion To Award Less Than The Statutory Rate Of Interest On The Judgment To Kell Absent An "Adequate Reason."**

The trial court erred by awarding interest at less than the statutory rate of 12% established by RCW 19.52.020 on the judgment awarded to Kell. Relying on *Marriage of Harrington*, 85 Wn. App. 613, 935 P.2d 1357 (1997), Harris claims that "it is clearly within the discretion of the court to set the interest rate for judgment." (Cross-Respondent Br. 19) But what the *Harrington* court in fact held was "although the trial court has discretion to reduce the rate of interest on deferred payments under a property distribution decree, *the court abuses its discretion if it fixes an*

interest rate below the statutory rate without setting forth adequate reasons for the reduction.” 85 Wn. App. at 631 (emphasis added) (citations omitted) (reversing trial court’s order awarding interest on an equalizing judgment at 7% when it failed to provide “any reasons for fixing the interest rate below the statutory rate”).

Here, the trial court abused its discretion in awarding interest at 6% rather than 12% because it failed to set forth “adequate reasons” - or any reason at all – for imposing less than the statutory interest rate on the judgment awarded to Kell. “There should be some apparent reason for giving one spouse the use, for business purposes, of the money of the other without interest or at less than the statutory rate.” *Berol v. Berol*, 37 Wn.2d 380, 383, 223 P.2d 1055 (1950) (reversing when the trial court failed to award any interest on the judgment awarded to the wife). Because the trial court awarded less than the statutory rate of interest on the judgment awarded to Kell without setting forth adequate reasons, this court should reverse if it remands on any of the issues raised by Harris in her appeal.

B. The Trial Court Could Not Order Kell To Reimburse Harris For Mortgage Payments Made By The Community On Harris's Separate Property Home.

The trial court could not order Kell to reimburse Harris for “rent” for the time the parties were living in her separate property home. The parties were married when the parties resided in Harris’s home, and it was the “community,” not Harris, that paid the mortgage. *Marriage of DeHollander*, 53 Wn. App. 695, 701, 770 P.2d 638 (1989) (“all of the earnings of a spouse during marriage are community property”). The trial court’s decision was premised on its erroneous determination that because Harris’s payments toward the mortgage exceeded Kell’s payments towards food and utilities, Kell somehow “owed” Harris for rent.

The authorities cited by Harris do not support her claim that the trial court had authority to order Kell to reimburse Harris for “rent” that the *community* paid on her separate property residence. Instead, these authorities hold just the opposite - when the community contributes to another party’s separate property, the *community* – not the separate property owning spouse - may be entitled to reimbursement. *Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993); *Marriage of Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984) (Cross-Resp. Br. 19). The

amount of the reimbursement to the community may be limited if the community received a mutual benefit, such as use of the property. *Pearson-Maines*, 70 Wn. App. at 869; *Miracle*, 101 Wn.2d at 139. But when, as here, the community was not seeking reimbursement for its contribution towards the mortgage, the trial court could not order the community to pay rent to the separate property owning spouse for its use during the marriage.

Because the community was entitled to this benefit in exchange for its contribution, the trial court erred in awarding Harris \$10,500 for the community's use of her separate property residence. In the event this court remands on any of the issues raised by Harris, it should also direct the trial court to vacate the award of \$10,500 to Harris.

III. CONCLUSION

The trial court erred in setting interest on the judgment awarded to Kell at less than the statutory rate without adequate reasons, and in awarding Harris a \$10,500 "reimbursement of rent" for contributions made by the community on her separate property home where the parties resided during the marriage. Kell only asks this court to reverse these decisions if it remands on any of the issues raised by Harris. Otherwise, Kell asks this court to affirm the

trial court's decision in its entirety, and to award him attorney fees for having to respond to Harris's appeal.

Dated this 10th day of April, 2013.

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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 April 10, 2013, I arranged for service of the foregoing Reply Brief of Cross-Appellant, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 10th day of April, 2013



Victoria K. Isaksen

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