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MAY 10 2013

COURT REPORTERS
DIVISION III
STATE OF WASHINGTON
By _____

No. 31073-6-III

WASHINGTON STATE COURT OF APPEALS,
DIVISION III

In re Marriage of:

GENE EDWARD WELTON,

Appellant-Cross Respondent,

v.

MARINA LEE MARTIN WELTON,

(nka Marina Lee Martin)

Respondent-Cross Appellant.

On Appeal from Chelan County Superior Court, Hon. T.W. Small

GENE WELTON'S OPENING BRIEF
Corrected

Gregory M. Miller,
WSBA No. 14459
Counsel for Gene Welton

Michael E. Vannier
WSBA No. 30238
Counsel for Gene Welton

CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
(206) 622-8020

JEFFERS, DANIELSON, SONN
& AYLWARD, P.S.
2600 Chester Kimm Rd
P.O. Box 1688
Wenatchee, WA 98801
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I. INTRODUCTION.

This divorce from a 12-year marriage is unusual in that all the significant marital assets are separate and are, in fact, expectancies because they cannot be immediately accessed by either of the parties. The parties lived a frugal life during the marriage with few vacations or amenities other than the outdoor accompaniments to life in Wenatchee where, for the most part, the husband, Appellant Gene Welton, worked for an orchard and the wife, Respondent Marina Martin, worked at Costco in Wenatchee or Everett, with seasonal work for two years at the orchard. Other than the two separate interests, the marital estate was de minimus.

The main argument is over whether Ms. Martin should get an award of, or a lien against, Gene's separate minority interest in Welton Orchards & Storage, LLC, for which he was operations manager and if so, how much. Gene's interest in the current value of the business was stipulated at just over \$1 million. Despite the fact he is 52, Mr. Welton's income, duties, and career are still determined by his parents, Mel and Lillian Welton, the majority owners of the business they began in 1965. They still thoroughly control the LLC, as the trial court explicitly found. *See* CP 168: 11-12.

Ms. Martin's significant separate property is her interest in the home of her elderly and ill father (76 years old with serious dementia in August, 2012) that is given her in his will, with an assessed value at trial of some \$148,000. CP 161. The court did not include it in the final property matrix. *See* CP 170-72.

It is Mr. Welton's position the trial court erroneously found that he, and thus the marital community, was under-compensated for the duration of the marriage, that the value of the LLC had increased over the course of the marriage due to his efforts, that its value had also increased by Mr. Welton taking artificially low draws, and that an equitable lien should be imposed on his separate property interest that would be based on the increase in value of the business over the course of the marriage. *See* CP 164-67. The ultimate lien was explicitly premised on achieving "an approximate 50/50 split overall" of the marital estate that includes Mr. Welton's "share of the increase in his separate estate." CP 168, conclusion of law N.6.

The most basic reason the trial court erred is because there is no evidence of the value of the LLC at the outset of the marriage in 1997, making it mathematically impossible to calculate what the increase -- or decrease -- would be over the 12-year marriage.

Despite the arguments over discovery, Ms. Martin only requested financial and tax records for the LLC back to 2004. *See* Ms. Martin's RFP Nos. 1 & 2, CP 245.

The second is that there is no evidence that supports the findings that Mr. Welton was underpaid, nor is there any finding of just how much he was underpaid. No testimony was offered of other, similarly-situated orchard operation managers and what they earn or the hours they work. Nor did an expert evaluate the work Mr. Welton did in the context of the orchard, the economy, and location and give an opinion that the entire package of pay plus other benefits (including a rent-free home and health insurance) was unreasonable or inadequate and, if it fell short, by how much. This was not done for the present for purposes of addressing maintenance. Nor was it done for the entire period of the marriage, which is necessary to demonstrate the financial basis for and amount of a lien.

Finally, these issues may be mooted by the trial court's error in denying Mr. Welton's affidavit of prejudice and motion for new judge that were submitted before a hearing on temporary orders and before any discretionary decision had been made by Judge Small. That error requires vacation of the award and remand to a new judge.

II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL.

A. Assignments of Error.¹

1. The trial court erred in denying Mr. Welton's motion for change of judge when the motion was filed before a discretionary decision had been made.
2. The trial court erred in entering the Decree of Dissolution, the money judgment contained therein, the findings of fact and conclusions of law, and the Charging Order to the extent they purported to impose a community lien on the alleged increase in value of Mr. Welton's separate property (an ownership interest in an LLC), and awarded to Ms. Martin a share of said lien.
3. The trial court erred in determining a specific increase in value of the orchard business LLC during the course of the marriage when no evidence was admitted of the value of the business at the time of the marriage in 1997 to use as a baseline and measure against the stipulated value of the business at the time of trial.
4. The trial court erred in its calculation of the increase in value of the Husband's interest in the LLC which it based on the owners' capital accounts, not the overall value of the LLC.
5. The trial court erred in finding that the Husband was underpaid based on his monthly draw but where he received multiple other benefits including housing, a vehicle, fuel, and health insurance and there was no evidence as to the standard or reasonable wage in the industry for a person in the Husband's position.

¹ The Findings of Fact and Conclusions of Law ("FOF" and "COL") are attached as Appendix A. Challenged Findings are highlighted.

6. The trial court erred in finding that the LLC “thrived” over the course of the marriage from 2003 to 2010 where tax returns admitted as evidence show six of those years with losses (five years over \$100,000) and only two years of profit, each of which was less than \$75,000.
7. The trial court erred in entering some or all of the following the findings of fact, and those conclusions of law which may contain findings therein, as set out in Appendix A: Findings of Fact 7.a (part); 7.d (parts); 7.e.; FOF 7.g (part); and Conclusions of Law I.1 (parts); I.2; I.3; J.1 (part); J.2 (part); N.1 (parts); N.2; N.4 (part); O (part).
8. The trial court erred in awarding attorney’s fees to the Wife.

B. Statement of Issues.

1. Must the trial court orders be vacated because the trial court failed to recuse based on an affidavit of prejudice made before a discretionary, non-scheduling decision had been made?
2. Must the property division be vacated where the findings are not supported by substantial evidence?
3. Must the property division be vacated because the trial court erred by using an incorrect legal test in deciding that Ms. Martin was entitled to a share of Mr. Welton’s minority ownership in the orchard LLC?
4. Must the finding that Mr. Welton’s interest in the LLC increased in value between the time of the marriage and the time of trial be vacated when there is no evidence of the value of the LLC at the time of trial, and thus no evidence on which to determine the LLC changed in value nor a specific amount that the value changed?
5. Must the finding that Mr. Welton was underpaid be vacated where there was no evidence as to the standard wage for a person in the industry in his position from which to make a

determination that his pay was inadequate and he was underpaid and, if so, how much he was underpaid?

6. Must the fee award to Ms. Martin which was based on her need and Mr. Welton's ability to pay, be vacated when the only evidence in the record is that Mr. Welton did not have the ability to pay?

III. STATEMENT OF THE CASE.

A. Background.²

Gene Welton ("Gene" or "Mr. Welton") and Marina Martin Welton ("Marina" or "Ms. Martin") met in spring, 1996, in Wenatchee and were married in July 1997 when they were 38 and 42 years old, respectively. FOF 1, CP 154. Marina had two sons from a prior marriage who testified (Steven and Christopher Stone, *see* II RP), and Gene had two prior marriages, but no children. *See* Exs. 7.R. (1981 decree) and 17 (1988 FOF & COL). They separated on March 29, 2009, *id.*, shortly after Gene's petition was filed. *See* CP 1-9 (petition). At the time of decision, Gene was 52 and Marina was 55. FOF 1.b, CP 154.³

² Although the trial court used "petitioner" and "respondent" in its final orders, the parties will be referred to by their first names or current formal last names for clarity.

³ FOF 1.b mistakenly lists Gene as 62 in August, 2012. This is apparently a scrivener's error as he was born in October, 1959 and was actually 52.

Gene has worked for the family orchard and warehouse full time all his adult life since graduating from high school in 1978. FOF 2, CP 154. Gene's pay was always modest throughout the marriage, ranging from \$1,600 to \$3,000 in pay but sweetened with a rent-free double-wide home on Orchard property, health insurance, a vehicle and gas, and a cell phone among other benefits. Marina's earnings were also in that range or higher when she worked for Costco in Wenatchee, or was on disability leave, or when she did seasonal work for the LLC in two years, or later worked for Costco in Everett, and operated her home businesses.

Marina had worked at the Costco as a manager in training in Anchorage, Alaska for two years before transferring to the East Wenatchee Costco in 1995. Marina had intermittent low back problems from 2000 and 2006, which resulted in time off. She eventually qualified for disability which terminated in June, 2008, when she returned to Costco full time. FOF 3, CP 155. She went back to work in the Woodinville Costco because her son from a prior relationship was employed at the East Wenatchee Costco and the company policy would not allow her to return to work there. *Id.*

B. The Welton Orchards & Storage, LLC.

Gene's parents started the orchard and controlled atmosphere warehouse facility in 1965. FOF 2, CP 154. In 1995 Gene's parents, Mel and Lillian Welton, formed Welton Orchards and Storage, LLC which owns all the assets of the orchard and the controlled atmosphere facility. *Id.*; see I RP 7-9. The orchard has apples and pears and the warehouse has a 30,000 bin storage capacity. FOF 2, CP 154. On January 1, 1996, before Gene met Marina, his parents gifted him a one-third interest in the LLC. FOF 2.b., CP 154.

C. Procedural History.

Mr. Welton filed the petition for dissolution March 24, 2009. CP 5-9. Ms. Martin filed her response on April 13, 2009, (CP 10 – 13) by an attorney who withdrew in less than three months, on July 8, 2009. CP 14-15. Over three months later, on September 30, 2009, with no counsel having appeared for Ms. Martin, Mr. Welton filed his note for trial setting to seek assignment of a trial date in order to get the case moving. CP 16-18. On October 26, 2009, with Ms. Martin still *pro se*, the “second set” trial date of December 3-4,

2009 was continued to May 4, 2010 by a stipulation and agreed order which was signed by Judge Small. CP 19-22.

1. Mr. Welton's affidavit of prejudice.

Represented by new counsel, Ms. Martin brought a motion for temporary orders, which was to be heard on December 21, 2009. *See* CP 23. However, the motion was continued because Commissioner Vanedgrift recused. *Id.* The commissioner indicated "he has previously represented [Mr. Welton]" and Ms. Martin indicated she "preferred Court recuse Its self [sic] to eliminate any uncertainty," which the commissioner did. CP 23 (clerk's notes).

Before the matter could be heard as re-scheduled for January 4, 2010, Mr. Welton filed an affidavit of prejudice against Judge Small on December 31, CP 24-25, invoking his statutory right to a change of judge before a discretionary decision had been made. Mr. Welton also filed a memorandum in support, citing RCW 4.12.050 and case law. CP 28-31. Judge Small indicated he had reviewed the brief before addressing the matter with the parties at the January 4 hearing. CP 26 (clerk's notes). Ms. Martin's then-attorney Mr. St. Louis argued he was aware Judge Small had represented Mr. Welton many years ago on an unrelated matter and that the affidavit was

untimely based on the signed stipulation and order continuing the trial date. *Id.* Mr. Welton's counsel stated that when he was practicing, Judge Small had represented Mr. Welton on a domestic violence matter that was dismissed, as part of urging the affidavit be granted. In the course of colloquy, Judge Small disclosed he also had represented Gene's father Mel Welton some 30-years ago on a matter which he could not recall the substance of. *Id.*

Judge Small ultimately denied the notion on the basis it was untimely based on the signed stipulation, then rescheduled the hearing on temporary orders and the settlement conference date. *Id.*

2. Pre-trial proceedings and discovery.

When the temporary orders motion was heard later in January, 2010, Ms. Martin was awarded monthly maintenance of \$735 on a temporary basis and \$3,500 in attorney's fees. CP 34-36; FOF 5.a., CP 157. That temporary maintenance was terminated after November 2010 (CP 48; FOF 5.b., CP 157) as part of continuing the trial date at Ms. Martin's request, and also because her monthly income was higher than Mr. Welton's and he had no ability to pay maintenance given his earnings from the LLC. *See* CP 168, ¶ O.

Trial of the matter was delayed by over five continuances sought by Ms. Martin (many over objection, summarized at CP 66-68), one of which caused the trial court to sanction her \$2,800 and limit further discovery. *See* CP 158¶ 5.d; CP 58-61. Despite the many trial continuances and discovery issues (which also saw Mr. Welton sanctioned), discovery was completed including Gene's parents' depositions and requested tax materials were provided. Ms. Martin only requested financial and tax records for the LLC back to 2004. *See* Ms. Martin's RFP Nos. 1 & 2, CP 245. The case thus resulted in terms being imposed on both parties before trial actually began.

D. Trial and Final Orders.

Trial eventually took place before Judge Small on December 8 and 9, 2011, and January 24, 2012. *See* VRPs I – III⁴ Judge Small issued a letter ruling on April 3, 2012, CP 121-139, and final orders were entered August 13, 2012. CP 153-172 (Findings of Fact and Conclusions of Law); CP 173-179 (Decree and Judgment Summary).

⁴ The three transcripts are paginated consecutively and will be referred to as I RP, II RP, and III RP.

At the end of trial Judge Small found that Mr. Welton, and thus the marital community, was under-compensated for the duration of the marriage, that the value of the LLC had increased over the course of the marriage due to his efforts, that its value had also increased by Mr. Welton taking artificially low draws, and that an equitable lien should be imposed on his separate property interest that would be based on the increase in value of the business over the course of the marriage. *See* CP 164-67.

The ultimate lien was explicitly premised on being “an approximate 50/50 split overall” of the marital estate, but focused on an even split of Mr. Welton’s “share of the increase in his separate estate” the trial court alleged had occurred over the course of the marriage. CP 168, COL N.6.

The trial court calculated the increase to Mr. Welton’s share of the LLC as “between \$305,07[4] and \$413,694.” CP 167, COL N.4, ultimately settling on an estimate of \$360,000. COL N.6., CP 168. Further calculations resulted in an equitable lien of “\$175,000, or \$10,000 less than the petitioner’s [Mr. Welton’s] share of the increase in his separate estate to achieve an approximate 50/50 split overall.” CP 168, COL N.6.

As for maintenance, Judge Small found Ms. Martin earned \$2,600 per month from part-time earnings and disability payments and had received her AA degree and was working on her BA. CP 156, ¶3.d & e. As noted, Judge Small had terminated temporary maintenance after November 2010 in part because Ms. Martin was making as much or more than Mr. Welton and he had no ability to pay. CP 157, ¶5.b. Mr. Welton's inability to pay was also the reason that maintenance was not awarded after trial. Judge Small ruled that, while he believed Ms. Martin had proven a need for maintenance for two years, "because the petitioner/husband is underpaid and his parents' [sic] control what draws the petition may receive, the respondent has failed to prove that the petitioner has a current ability to pay maintenance. Consequently, no additional maintenance will be ordered." CP 168, ¶ O. Judge Small then awarded Ms. Martin \$10,000 in attorney's fees when entering final orders, despite having just ruled Mr. Welton had no ability to pay even maintenance and had not paid his own fees. The final award was calculated at \$195,115.58 when Judge Small added in back maintenance, pre and post-judgment interest, and attorneys' fees. CP 180-81, Charging Order. Gene Welton appeals.

IV. ARGUMENT.

A. Standard of Review.

Property divisions under RCW 26.09.080 are reviewed for an abuse of discretion. *In re Marriage of Schweitzer*, 81 Wn. App. 589, 595-96, 915 P.2d 575, *aff'd*, 132 Wn.2d 318 (1997) (reversing property award). A trial court abuses its discretion when its decision is manifestly unreasonable; or is exercised or based on untenable grounds or reasons concerning the purposes of the trial court's discretion; or for no reason, since then there is no exercise of discretion. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993) (reversing for abuse of discretion). *Accord*, *Coggle v. Snow*, 56 Wn. App. 499, 505-07, 784 P.2d 554 (1990) (vacating discretionary decision); *Dickison v. Dickison*, 65 Wn.2d 585, 587, 399 P.2d 5 (1965) (modifying decree for abuse of discretion by trial court that provided no basis for disproportionate award of property).

The review of discretionary decisions in family law cases employs a three-part analytical test:

A court's decision is manifestly unreasonable if it is [1] outside the range of acceptable choices, given the facts and the applicable legal standard; [2] it is based on untenable grounds if the factual findings are unsupported by the record; [or 3] it is based on untenable reasons if it is based on an

incorrect standard or the facts do not meet the requirements of the correct standard.

In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (emphasized numbers added) (reversing because the test was not met).⁵ “A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.” *Washington State Physicians Insurance Exchange & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (footnotes omitted) (reversing trial court).

The result of these cases is that the abuse of discretion standard is both substantive and well established: discretionary rulings must be grounded in **both** the correct legal rules **and** the actual facts, or they are an abuse of discretion. The trial court decisions must be founded on principle, reason, and the facts. *See Coggle v. Snow*, 56 Wn. App. at 505-07.

A court's characterization of marital property as either separate or community is a question of law subject to de novo review. *Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 467

⁵ *Accord, Marriage of Kovacs*, 121 Wn.2d at 801 (reversing for abuse of discretion); *In re Marriage of Wicklund*, 84 Wn. App. 763, 770 n. 1, 932 P.2d 652 (1996) (reversing the trial court).

(2000). But the factual findings upon which the court's characterizations are based, like any findings of fact, may be affirmed only if they are supported by substantial evidence. *Id.* *Accord, Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959); *United Pacific Ins. Co. v. Lundstrom*, 77 Wn.2d 157, 459 P.2d 930 (1969). “Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986), *cert. dismissed*, 479 U.S. 1050, 107 S. Ct. 940, 93 L. Ed. 2d 990 (1987).

Unrebutted expert testimony is sufficient to support a valuation. *See Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 695, 132 P.3d 115 (2006). While the value of property in a dissolution will be affirmed if it is within the range of evidence, *Worthington v. Worthington*, 73 Wn.2d 759, 764-765, 44 P.2d 478 (1968); *In re Marriage of Sedlock*, 69 Wn. App. 484, 490-491, 849 P.2d 1243 (1993), the valuation must be vacated if, as here, it is *not* within the range of the evidence. *See In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462 (1993), *review denied*, 122 Wn.2d 1021, 863 P.2d 1353 (husband did not establish that trial court

undervalued assets awarded to wife and overvalued assets awarded to him in property division; while court may have assigned values to property different from those suggested by husband, court's valuation was within scope of evidence).

B. The Property Division Must Be Vacated Because the Trial Court Erroneously Denied Mr. Welton's Motion for Change of Judge Following an Affidavit of Prejudice That Was Filed Before a Discretionary Ruling Was Made.

Affidavits of prejudice are provided for as a matter of right by RCW 4.12.040 and 4.12.050. "A party in a superior court proceeding is entitled to one change of judge upon timely filing an affidavit of prejudice." *Tye v. Tye*, 121 Wn. App. 817, 820, 90 P.3d 1145 (Div. III 2004). As the Supreme Court summarized years ago:

Under these statutes and under our decisions a party litigant is entitled, as a matter of right, to a change of judges upon the timely filing of a motion and affidavit of prejudice against a judge about to hear his cause **or any substantial portion** thereof on the merits. Such a motion and affidavit seasonably filed presents no question of fact or discretion. Prejudice is deemed to be established by the affidavit and the judge to whom it is directed is divested of authority to proceed further into the merits of the action.

State v. Dixon, 74 Wn.2d 700, 703, 446 P.2d 329 (1968) (emphasis added).

To be “seasonably filed” the affidavit must be made before a discretionary ruling, as defined in the statute. The statute provides:

(1) Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial before such judge: **PROVIDED, That such motion and affidavit is filed** and called to the attention of the judge before he or she shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and **before the judge presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial,** the arraignment of the accused in a criminal action or the fixing of bail, **shall not be construed as a ruling or order involving discretion within the meaning of this proviso;** and in any event, in counties where there is but one resident judge, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: AND PROVIDED FURTHER, That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: AND PROVIDED FURTHER, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW 4.12.040.

RCW 4.12.050(1) (emphases added).

This Court and the Supreme Court have given effect to the underlined portion of the statute and held that orders such as the

entry of scheduling orders, or setting a matter for hearing, are in the nature of the arrangement of the calendar or setting a matter for hearing or trial, and thus come within the proviso so that recusal is required as a matter of law; they have reversed trial courts who have denied the motion and failed to recuse. *See Dixon* (reversing trial court for failing to recuse after deciding the State's motion to renote Dixon's motions to dismiss and suppress); *Tye v. Tye*, 121 Wn. App. at 821 (reversing trial court's refusal to recuse because case scheduling orders did not involve exercise of discretion under the statute); *Hanno v. Neptune Orient Lines, Ltd.*, 67 Wn. App. 681, 838 P.2d 1144 (1992) (reversing trial court that denied recusal after filling in scheduling orders, including filling in and amending and changing dates for mediation, settlement demand, and the pretrial conference).

Of particular import is *In re Marriage of Hennemann*, 69 Wn. App. 345, 848 P.2d 760 (1993). There, the wife in a divorce proceeding filed an affidavit of prejudice and sought a change of judge. Her motion was denied on the basis the trial judge had made discretionary rulings. As in the *Hanno* case, the "rulings" in *Marriage of Hennemann* were squarely within the proviso of the

statute of arranging the calendar or setting a motion or the trial for hearing, and thus were not “discretionary” for purposes of the statute. *Hennemann* involved setting “dates regarding the trial date, deadlines for submission of various documents, and the dates for settlement and pretrial conferences.” *Id.*, 69 Wn. App. at 347.

After the motion for change of judge was denied, as in this case, the *Hennemann* matter went to trial from which the appellant appealed. She included in her assignments of error the failure to grant the motion for a new judge and expressly requested that the court set aside all the trial court’s orders after filing the motion, along with other challenges to the decree. *Id.* The respondent in *Hennemann* agreed that the motion for change of judge was improperly denied and this Court reversed and remanded for a new trial. *Id.*, 69 Wn. App. at 348-49.

The plain import of the statute is that only a substantive discretionary ruling disables the statutory affidavit as of right. There was no such discretionary ruling here before Mr. Welton filed his affidavit of prejudice, only the arrangement of the calendar and setting the matter for trial. Under the statutes and established law, the trial court was required to have granted Mr. Welton’s motion.

Since Mr. Welton was entitled to have his seasonably filed affidavit of prejudice granted as a matter of right, RCW 4.12.040; *Dixon*, the trial court erred in denying the motion. *Id.* Moreover, since it was made plain at the January 4 hearing that Judge Small had represented both Gene and Mel Welton on different matters when he was an attorney, and Gene Welton sought the recusal, Judge Small should have recused to insure the appearance of fairness at the outset of a contested marital dissolution. *See Tatham v. Rogers*, 170 Wn. App. 76, 93-96, 283 P.3d 583 (2012).

The judgment below must be vacated and the matter remanded for a new trial before a different judge. *Hennemann*, 69 Wn. App. at 346-47.

C. The Trial Court's Distribution of Property Must Be Guided by the Factors Enumerated in RCW 26.09.080 and Applicable Case Law Which Has Long Safeguarded Spouses' Separate Property By Application of Presumptions.

1. The property division must be based on the statutory factors and ultimately be fair and equitable.

In a proceeding for dissolution of a marriage, RCW 26.09.080 governs the disposition of both separate and community property.

The statute requires the court to:

make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

RCW 26.09.080.

2. The trial court must apply the correct presumptions as to the property in question; here that means Ms. Martin had the burden of establishing by clear evidence that any increase in the separate property was attributable to community effort, which she failed to do.

In order to make a “just and equitable” property division, the trial court must not only consider the factors listed in the statute, but also apply the underlying principles and presumptions established by the appellate courts.⁶ High among them is the sanctity of a person’s

⁶ The trial judge is not an untethered “knight errant” who may do whatever “justice” in a case he or she deems fit, but rather always is tied to the applicable legal rules and facts of the case. See *Coggle v. Snow*, *supra*, 56 Wn. App. at 504-07, quoting and discussing Justice Benjamin Cardozo’s famous reflection on the nature of judicial discretion in *THE NATURE OF THE JUDICIAL PROCESS* (1921). This makes sense because completely
(Footnote continued on next page.)

separate property which is guarded as much as the creation of community property during the marriage. *See Marriage of Skarbeck, supra*, 100 Wn. App. at 447-49.

Competing community property principles come into play when a spouse performs services to benefit separate property. Earnings arising from services performed during marriage are community property while assets acquired during marriage are presumptively community property. *See Hamlin v. Merlino*, 44 Wn.2d 851, 858, 272 P.2d 125 (1954) (citing *In re Estate of Herbert*, 169 Wash. 402, 408, 14 P.2d 6 (1932)); *In re Estate of Madsen v. Commissioner*, 97 Wn.2d 792, 796, 650 P.2d 196, 199 (1982). However, rents, issues and profits generated by separate property remain separate property as well. *See* RCW 26.16.010-020. If the owner of a separate property interest who puts community labor into that interest is adequately compensated, the remainder of the separate property business and the income generated remain separate property and the community has no right to an equitable lien. *See, e.g., Estate of Herbert*.

unbridled discretion means, as a practical matter, there are no rules, no accountability, and no predictability for clients and their counsel.

Here, no evidence was presented as to what the “proper” compensation level would be for a person in Mr. Welton’s position. The only evidence is what his pay and other compensation amounted to. But there was no evidence of the compensation for others who operated different orchards to use in comparison and determine that, indeed, Mr. Welton was undercompensated, and by how much.

In this case the long-settled rule that applies to Mr. Welton’s minority interest in the Orchard LLC is that property acquired before marriage is that spouse’s separate property. *Marriage of Skarbeck*, 100 Wn. App. at 447. There is no dispute that Mr. Welton’s interest in the LLC was acquired by him before the marriage (indeed, before he had even met Ms. Martin) so that his property interest is his separate property.⁷ Rather, the big argument is over two main points: 1) should an equitable lien in favor of the community be imposed on Mr. Welton’s separate property interest in the LLC due

⁷ The settled presumption is that, once the separate character of property is established (as it is here), it cannot be overcome except by a showing of clear and convincing evidence of the owner’s intent to change the character from separate to community property; and the burden is on the proponent of the community characterization to demonstrate that change. See, e.g., *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009); *Guye v. Guye*, 63 Wash. 340, 349, 115 Pac. 731 (1911). Here the burden was on Ms. Martin to establish the basis for a community lien on Mr. Welton’s separate property by clear and convincing evidence.

to Mr. Welton's work for the LLC? And, 2) was there an increase in the value of Mr. Welton's separate property during the marriage because of Mr. Welton's efforts, if not otherwise adequately compensated, as to which a community interest or equitable lien should attach?

Both these issues are framed by the accompanying presumptions that placed the burden of establishing the basis for a lien or increased value of the separate property on Ms. Martin. First, it is settled that "a spouse seeking a community interest in separate property must overcome the presumption that separate property maintains its separate character absent evidence to the contrary." *Marriage of Pearson-Maines*, 70 Wn. App. 860, 866, fn. 5, 855 P.2d 1210 (1993) (citing *Hamlin v. Merlino*, 44 Wn.2d 851, 857-58, 272 P.2d 125 (1954)). This must be shown by "clear and convincing evidence." *Marriage of Skarbeck*, 100 Wn. App. at 448. Second, it is also settled that any increase in value of a spouse's separate property is presumed also to be separate property when dividing the property in a dissolution. *In re Marriage of Elam*, 97 Wn.2d 811, 816-17, 650 P.2d 213 (1982); *Marriage of Pearson-Maines*, 70 Wn. App. at 869.

As noted in the introduction, *supra*, the calculation the trial court sought to perform was impossible because there was no information before the Court as to the value of Mr. Welton's share in the LLC in 1997 at the outset of the marriage. Nor is there any evidence in the record from which that calculation can be made, as Mr. Martin only sought financial information as early as 2004. Without a starting value for the separate property interest, even assuming a correct calculation of Mr. Welton's separate interest in the LLC based on the stipulation at the time of trial, there is no way to determine what the increase was, or indeed, if there even was an increase.

Similarly, there is no evidence that Mr. Welton was undercompensated for his labor during the entirety of the marriage or, if he was, what the amount of that undercompensation was. There is a similar lack of an evidentiary basis, much less clear and convincing evidence, that Mr. Welton was underpaid as there is of an alleged large increase in the value of his interest in the LLC due solely to his uncompensated efforts.

For both reasons the evidence does not support the property division and it must be vacated as an abuse of discretion.

D. The Trial Court Erred in Finding That Mr. Welton Was Undercompensated for the Labor He Performed for the LLC During the Marriage Because There Is Not Substantial Evidence To Support That Finding.

The trial court's finding that Mr. Welton was not paid enough for his work for the LLC during this entire 12-year marriage must be vacated because there is no evidence to support it, much less the required substantial evidence of clear and convincing proof. There was no testimony of what other persons in Mr. Welton's position earned other than his testimony and that of Lillian Welton, the LLC's bookkeeper, who indicated it was all the LLC could afford given their various costs and loans that had to be serviced.⁸ No expert analyzed the typical factors required to give an opinion on what reasonable compensation is for a person in Gene's line of work, with his duties, the hours worked, his experience, and in the context of his particular business in this part of the country. Nor is there any evidence that the expense of employing a non-owner employee to perform Mr. Welton's services would be substantially different than what his total compensation was during the marriage.

⁸ See, e.g., I RP 54-71 (Lillian Welton); I RP 130-31(Gene Welton).

The record is devoid of any opinion stating Mr. Welton was not compensated enough, or examples of other similarly employed orchardists who were paid substantially more. Since under the established presumptions specified *supra* it was Ms. Martin's burden to demonstrate that the total compensation package that the community benefited from was too low and there is no evidence to support such a finding, the record cannot support the equitable lien based on undercompensation.

The evidence at trial established that Gene was compensated for his efforts at the orchard well beyond what he was paid on a monthly basis when the other benefits that he received are taken into account, including the free housing, use of a car and fuel, and health insurance. Since there is no positive evidence, or competent opinion, that this did not adequately compensate the community for his efforts, Ms. Martin failed to meet her burden. Moreover, it means there is no evidentiary basis for the findings and conclusions that base the lien on "undercompensation," *e.g.*, COL N.1 and 2. The property division based on the alleged undercompensation must be vacated as an abuse of discretion. *Marriage of Littlefield, supra.*

E. Even If Mr. Welton Was Undercompensated, the Trial Court Erred by Giving Ms. Martin an Equitable Lien on Half of Mr. Welton’s Interest in the LLC’s Total Alleged Increase in Value.

At the end of a marriage, each party is entitled to the increase in value during the marriage of his separate property, except to the extent the other spouse shows the increase was due to community contributions. *Lindemann v. Lindemann*, 92 Wn. App. 64, 73, 960 P.2d 966 (1998). This placed the burden on Ms. Martin. The presumption that an increase in the value of separate property remains separate property may be rebutted only by direct and positive evidence that the increase is attributable to community funds or labor. *In re Marriage of Elam*, 97 Wn.2d 811, 816, 650 P.2d 213 (1982); *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993).

“The valuation of the community services invested in separate property may be approached by either determining the equivalent of a reasonable wage or by fixing the resulting increase in value.” *Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993) (citing Harry M. Cross, “The Community Property Law in Washington,” 61 WASH. L. REV. 17, 71 (1986)).

Here the trial court held that Gene was under-compensated for his community efforts on his separate property without any basis in the record, as noted *supra*, which alone is sufficient to grant his appeal. Moreover, the trial court did not attempt to value the amount Gene was undercompensated, but simply ruled that he was undercompensated without any factual basis. The ruling thus failed to satisfy the first approach articulated by *Pearson-Maines*. This left only the option of “fixing the resulting increase in value,” an approach that Judge Small recognized required “specific” evidence, including “precise evidence as to the value of the contribution. COL B, CP 162-63. The ruling fails to meet its own recognized requirements because Ms. Martin failed in her proof.

1. The Community Can Only Be Entitled to the Amount That the Evidence Establishes With Specificity That Mr. Welton’s Labor Increased the Value of the LLC Over the Entire Marriage.

The amount to which the community is entitled may be determined by the increase in value to Mr. Welton’s interest in the LLC that is *proven to be caused by the community labor income* that is *reinvested in the LLC*. Under this theory of apportionment, the community is not entitled to the *total* increase in value in

Mr. Welton's interest in the LLC from the date of marriage; its lien is limited to the increase due to community funds (the undrawn income) exclusive of the increase due to separate property investments. There is a significant distinction between awarding the increase in value of separate property as community property and awarding only the increase in value *attributable to community labor*.

Here there is insufficient evidence to determine just what, if any, was the increase in the value of the LLC over the course of the marriage. There is no proof of the value of the LLC at the time of the marriage in 1997.

Without establishing the base-line value of the LLC as a going concern in 1997, it literally is impossible to determine what the increased value is of the LLC at the time of separation in 2009, even with a stipulated value for the business.

Had there been proof that established that Mr. Welton was underpaid, the solution would have been to calculate what he should have been paid, subtract his total compensation from that figure, including all benefits such as health care, housing, phone, and a truck and gas, and to the extent there is a material difference, award Ms. Martin her community 50% share of the unpaid amount.

The concept of apportionment has been addressed in many cases. *See, e.g., Conley v. Moe*, 7 Wn.2d 355, 363, 110 P.2d 172 (1941) (natural enhancement in value of separate property of spouses is not property acquired during marriage; if separate property is enhanced in value *by the use of community funds*, the increase in value is community property); *Soltero v. Wimer*, 159 Wn.2d 428, 435 n.4, 150 P.3d 552 (2007) (“Ordinarily, the community would be entitled to the increase of value in property due to the *labor* of each member performed during the relationship, but not to the ‘natural increase’ of the value of separate property.”).

In *Marriage of Elam*, the Supreme Court made clear that the burden is on the party seeking to impose the equitable lien to produce “direct and positive” evidence that community labor or funds caused the increase in value of the separate property. *Elam, supra*, 97 Wn.2d at 816-17. Here, Ms. Martin had the burden to produce positive evidence that the increased value of the LLC was due to Mr. Welton’s uncompensated labor rather than “natural increase” from inflation or market forces, or some other reason, such as the management and direction of the enterprise by Mel Welton. She produced no such evidence.

The trial court erred in applying this rule given a lack of any specific and positive evidence showing that it was Mr. Welton's labor that caused the claimed increase in value of the LLC, and by how much. *See Pekola v. Strand*, 25 Wn.2d 98, 102, 168 P.2d 407 (1946) (no right to reimbursement if the extent of the community contribution to the separate property cannot be ascertained). *Cf. Pearson-Maines*, 70 Wn. App. 860 (limiting measure of community contribution to "resulting increase in value").

2. Even If the Community Is Entitled to One-Third of the Total Increase in the LLC (Whether Because of His Labor Or Market Forces/Inflation), the Court Still Erred in Its Valuation.

a. The Court Must Offset the Award to the Community by the Value of Benefits the Community Received.

Even where the community may be entitled to reimbursement for contributions resulting in an increase in value to separate property, the court must offset any right of reimbursement to the relationship against a reciprocal benefit received by the relationship. *See Connell v. Francisco*, 127 Wn.2d 339, 351, 898 P.2d 831 (1995). For instance, the community right of reimbursement for improvements to property may be offset by the benefit received by

the community for use and enjoyment of the property. *See In re Marriage of Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984); *Pearson-Maines*, 70 Wn. App. at 870.

In this case, there are at least two bases to offset the equitable lien the trial court should have applied, but did not. *See* FOF N.6, CP 168. The first is the value of the rent-free home the parties lived in through the entire marriage, which was valued at about \$800 per month for rent and utilities. *See* II RP 211-12. Half of the community benefit would be \$400 per month, or \$4,800 per year. Over the 12 years of the marriage, that benefit was \$57,600. No such offset was included in the trial court's final orders.

In addition, Mr. Welton was paid for his work for the LLC on a monthly basis net of taxes and withholding that ranged from \$1,600 in 2006 to \$3,000 in January 2009. *See* I RP 69; Ex. 1(h). There is no deduction made for his salary and its benefit to the community. These errors also require the vacation of the property division.

b. The Record Fails to Support the Findings That the LLC Thrived Financially Over the Course of the Marriage, Which Was a Critical Basis for Imposing the Equitable Lien.

Findings of Fact 7.d, e, f, and g set out the trial court's findings that the LLC "thrived" during the course of the marriage and that there were dramatic financial gains to all three partners, including Mel and Lillian Welton, as a direct result of Gene Welton's work. While flattering to Gene, these findings simply are not tenable because they are not supported by the record.

First, there is no determination of the value of the business at the time of the marriage in 1997, so, as noted *supra*, there is no baseline to determine what the increase may or may not have been over the course of the marriage.

Second, the tax record references in the Findings contain errors which appear to create or inflate the perception of the LLC's success. For instance, Finding 7.d states that the taxable income for 2010 was a loss of \$115,165. In fact, as seen in sealed tax records, the 2010 net loss for the partnership was \$156,215. *See Ex. 2.j., 2010 Taxes, pp. 1 & 5.* Thus, even assuming that the LLC's net rental income from the warehouse in 2010 was not included in that

negative amount, as Finding 7.d implies, those numbers still must be combined under the trial court's approach to get a bottom line for the LLC which, rather than pure profit of \$250,000, is less than \$100,000. Similarly, the trial court appeared to take the line item for Gene Welton's share of the warehouse net gain on his K-1, Ex. 2j., 2010 Taxes p. 29 (fax stamp 35/49) to use in Finding 7.d to compare with his draws for the year (which also is misstated as \$42,570), and so "demonstrate" he was underpaid.

In fact, Gene's Schedule K-1 shows that the orchard loss of over \$51,000, combined with the rental net income of \$82,000, meant that Gene's net "share" from the LLC was about \$31,000, just about what he received in the "guaranteed payments" that are also listed on the K-1 form. Finding 7.d also mistakenly states that Mr. Welton "only received draws amounting to \$42,570 that same year," to contrast that with the mistaken \$82,649 that the Finding says was his share for the overall business. In fact, Mr. Welton's overall share was just about the same as what was paid out to him as his guaranteed payments.

Similarly, for 2009, Finding 7.e mistakenly tries to compare Mr. Welton's draws to his share of the net rental income from the

warehouse of \$392,648, stating that Mr. Welton's share was \$129,574. The problem with this is that the Finding fails to take into account the loss on the orchard side and overall loss of \$418,870. See Ex. 2.j., 2009 Taxes p. 1, Partnership Form 1065. That loss eliminates the gains of the warehouse and demonstrates just how difficult the orcharding and farming business can be, and is.

The fact that the LLC was a hard business with lots of ups and downs, including many years of losses during the period of the marriage, was well established at trial, in stark contrast to the picture painted by the trial court's final orders. Lillian Welton, who helped start and operate the business in 1965, shifted to doing only the bookkeeping two or three years after they changed the ownership of the orchard to an LLC in 1995. I RP, pp. 7-8. Lillian related how the LLC was created with equal contributions from her and her husband totaling \$5,188,180. I RP, p. 11; Ex. 2.b, p. 26 (setting out the capital formation for the LLC in 1995).⁹

Lillian went on to testify about how she and Mel have continually added capital to the LLC since 1995. She described the

⁹ No values were testified to the value of the orchard business in 1997 at the outset of the marriage.

situation in 2000 when they had to refinance to avoid bankruptcy, a situation which led to the execution by Ms. Martin of a disclaimer in any of the real properties. *See* I RP, pp. 30-40 and Ex. 2.g. The sealed underlying loan documents from the 2000 refinance are in Ex. 2.f. and demonstrate the amount of debt the LLC was carrying at that time when they had to get an additional \$206,700 in order to avoid bankruptcy. The new loan was at an initial interest rate of 11.30%. Ex. 2.f., p. 10. The other loans which were refinanced totaled \$2,448,121, and all were refinanced with an initial interest rate of 9.35%. *See* Ex. 2.f., pp. 13 – 16. The current loans payable by the LLC are \$1,908,094. Ex. 10, p. 2.

Lillian testified to the many additional capital contributions she and Mel made to the LLC, and continue to make, including a \$100,000 contribution in January of 2011. I RP, p. 30-31. They added capital to the LLC of \$300,000 over several years following insurance recovery from a traffic accident that Mel had, receiving checks and putting the money into the company between 2006 and 2010. *See* I RP 31-34. Lillian also testified to the number of years of losses based on the tax returns from 2003 through 2010, beginning with the loss of \$272,760 in 2005. *See* I RP pp. 54-55.

Lillian put it simply when asked why they kept putting money into the company: “Because the company wasn’t making money.” I RP 65. She wasn’t kidding. Although she and Mel capitalized the LLC in 1995 with \$5,188,180, after 15 years of operations and the steady infusion of large amounts of capital, the estimated fair market value of the LLC in December, 2010, was not much different at \$5,479,351. Ex. 10, p. 2. The trial court’s focus on the LLC’s members’ claimed increases in the “capital accounts” between 2004 and 2010 does not tell the true story of the difficulty of maintaining a business and that it appears there was a net loss over that time period when the additional capital is taken into account.

Lillian also testified that it is she and Mel who make the decisions on financial issues and the day-to-day decisions on how the LLC runs, I RP, p. 65, which Gene acknowledged, I RP 130-31, and which is undisputed. These facts do not support, but refute, the trial court’s findings that much of the alleged increase in value of the LLC during the marriage is due to Gene Welton’s efforts.

They also determine how much to pay Gene. *Id.* Gene’s pay ranged from \$1,600 per month in 2006 up to \$3,000 per month in

2009. I RP 67-69. Lillian also testified that she and Mel do not take much in the way of draws from the LLC. I RP 70. This undisputed evidence refutes the findings that it was Gene Welton's low draws that "directly resulted" in greatly improving the LLC's financial condition. *See* COL N.2.

In sum, the record is undisputed that running an orchard and a controlled-atmosphere warehouse is a hard business and that over the last 15 years Lillian and Mel had to make capital contributions to keep it viable. Because the challenged portions of Finding 7 are not supported by the evidence, they cannot stand and require reversal.

F. The Fee Award Should Be Vacated.

Attorney's fees may be awarded under RCW 26.09.140 based on a party's need and the other party's ability to pay. *See* Weber, "Family and Community Property Law," §40.2.1, 21 WASHINGTON PRACTICE, (2009 & 2012 supp.). Since the trial court already determined Mr. Welton could not pay maintenance due to his low level of income controlled by his parents, nor his own attorney's fees, neither could he pay the fee award imposed in the Charging

Order. There was no tenable basis for the award of fees, which was an abuse of discretion.¹⁰

V. CONCLUSION

Appellant Gene Welton respectfully asks the Court to vacate the property division and all underlying orders and remand to a new judge because his motion for a new judge was erroneously denied. Alternatively, he requests the Court vacate the property division for the abuse of discretion in imposing an equitable lien without a proper factual basis under any of the assorted legal theories.

DATED this 9th day of May, 2013.

CARNEY BADLEY SPELLMAN, P.S.

By: Gregory M. Miller
Gregory M. Miller, WSBA No. 14459
Counsel for Appellant Gene Welton

JEFFERS, DANIELSON, SONN &
AYLWARD, P.S.

By: Michael E. Vannier
Michael E. Vannier, WSBA No. 30238
Counsel for Appellant Gene Welton

¹⁰ This also demonstrates the effect of the error when Judge Small failed to recuse based on Mr. Welton's affidavit of prejudice before he had made any discretionary or substantive decisions, and why the colloquy at the hearing shows the appearance of fairness doctrine was implicated.

CERTIFICATE OF SERVICE

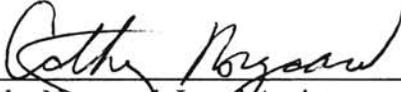
The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date stated below, I caused to be delivered in the manner indicated a copy of the foregoing *Corrected Opening Brief, Appendix A and this Certificate of Service* on the following parties:

<p>Mr. Kenneth W. Masters, Esq. Masters Law Group PLLC 241 Madison Avenue North Bainbridge Island, WA 98110 Phone: (206) 780-5033 Fax: (206) 842-6356 Email: ken@appeal-law.com (atty for Marina Lee Martin Welton)</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other</p>
<p>Kyle Flick Law Office of Kyle D. Flick, PS 222 S. Mission Wenatchee, WA 98801 Phone: 509-662-3333 Fax: 509-663-7396 (atty for Marina Lee Martin Welton)</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> Fax <input type="checkbox"/> Email <input type="checkbox"/> Other</p>
<p>Michael E. Vannier Jeffers, Danielson, Sonn & Aylward, PS 2600 Chester Kimm Road PO Box 1688 Wenatchee, WA 98801 Phone: 509-662-3685 Fax: 509-662-2452 Email: mikev@jdsalaw.com; shawnag@jdsalaw.com (atty for Gene Edward Welton)</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email <input type="checkbox"/> Other</p>

Renee S. Townsley Clerk of the Court Court of Appeals, Division Three 500 N. Cedar Street Spokane, WA 99201	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> Fax <input type="checkbox"/> Email <input checked="" type="checkbox"/> Other Federal Express
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DATED this 9th day of May, 2013.



Cathy Norgaard, Legal Assistant

APPENDIX

Pages

APPENDIX A: Findings of Fact and Conclusions of Law
(CP 153-172)[*annotated*] A-1 to A-20

APPENDIX A

FILED ²⁰_B

AUG 13 2012

KIM MORRISON
CHELAN COUNTY CLERK

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused to be delivered via hand delivery/US Mail/fax/e-mail a copy of this document to Michael Vassler Attorney for Petitioner

Vaneta J. Welton
Dated: 6-27-12 at Wenatchee, Washington



In re the Marriage of:)	
GENE EDWARD WELTON,)	NO. 09-3-00159-4
)	
Petitioner,)	FINDINGS OF FACT AND
and)	CONCLUSIONS OF LAW
)	
MARINA MARTIN-WELTON,)	
)	
Respondent.)	

THIS MATTER having come before the court on December 8, 9, 2011 and January 24, 2012, and the court having heard the testimony of the witnesses, reviewed the exhibits and considered the following: The Clerk's minutes of all pretrial hearings, all pre-trial orders regarding maintenance and attorneys' fees, Order to Compel dated October 28, 2011, Order Permitting Entry onto Property on Shortened Notice, Protection Order and Denial of Sanctions dated November 22, 2011, Petitioner's Trial Brief, Trial Brief of Respondent, Supplemental Trial Brief of Respondent, all Trial Exhibits admitted into evidence, the court's trial notes, the transcripts of the testimony of Christopher Stone and Steve Stone, statutory authority - RCW 26.09.080, .090, and .140, cases In re Marriage of Konsen, 103 Wn.2d 470 (1995), In re Marriage of Griswold, 112 Wn.App 333 (2002), and otherwise being familiar with the records and files herein, submits the following

FOF & COL - Page 1

LAW OFFICE OF KYLE D. FLICK, P.S.
222 South Mission
Wenatchee, WA 98801
(509) 662-3333
FAX (509) 663-7396

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FINDINGS OF FACT

1
2 1. General and Jurisdictional.

3 a. The parties met in 1996 at the East Wenatchee Costco which was the wife's
4 former place of employment. The parties were married on July 26, 1997, and separated on March
5 29, 2009. There were no children of the marriage, and the wife is not pregnant.

6
7 b. Gene Welton is 62 years old. Marina Welton is 55 years old. Mr. Welton
8 graduated from Eastmont High School in 1978. He has worked for the family orchard and
9 controlled atmosphere warehouse his entire adult life. The husband has two brothers. The
10 petitioner/husband is the only son who has worked for the family orchard business.

11
12 2. Welton Orchards and Storage, LLC.

13 a. The family orchard began in 1965. Originally, the orchard and controlled
14 atmosphere facility were owned and operated by the petitioner's parents, Mel and Lillian Welton.
15 Welton Orchards and Storage, L.L.C. was formed by petitioner's parents. The Limited Liability
16 Company owns all of the orchards' assets and controlled atmosphere warehouse. The orchard
17 primarily includes a variety of apples and pears. The controlled atmosphere warehouse has a 30,000
18 bin storage capacity. As of the date of trial, the warehouse and the land it sits on had an assessed
19 market value of \$2,898,100.

20
21 b. On January 1, 1996, the petitioner's parents gifted Petitioner a 1/3 interest in the
22 L.L.C. before he married the respondent. The parties stipulated the petitioner's minority interest in
23 the L.L.C. is currently worth \$1,095,870.
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1 c. The parties stipulated the fair market value of the real estate owned by the
2 L.L.C. was \$5,688,500.00, including the petitioner's parents' home. Excluding the value of their
3 home, the petitioner's 1/3 interest in the L.L.C. would be worth \$1,018,000.

4 d. In 2000, the respondent disclaimed her interest in eight parcels of property
5 owned by the L.L.C. These parcels are valued at \$5,352,500. The L.L.C. later purchased two
6 additional parcels for \$260,000 and \$76,000 during the marriage and before separation. After
7 separation, the L.L.C. acquired the Stimus property for an additional \$235,000.
8

9 e. During the marriage, the parties lived in a double-wide modular home, rent free,
10 that was owned by the L.L.C.. The home was on a parcel valued at \$811,400, of which \$221,400
11 was attributed to two modular homes, including the family home, where the petitioner/husband
12 continues to reside, rent free. The L.L.C. paid and continues to pay the property taxes, insurance,
13 and utilities for this residence as part of the petitioner's employment with the L.L.C., as well as his
14 health and dental insurance, and telephone.
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18 3. The Respondent/Wife's Work History.

19 a. Prior to 1995, the respondent worked at Costco as a manager in training in
20 Anchorage, Alaska for more than two years. She earned more than \$34,000 per year plus benefits.
21 In 1995 she was transferred to the East Wenatchee Costco, and took a reduction in pay and position.
22 Between 2000 and 2006, the respondent had intermittent low back problems that resulted in time off
23 work. Eventually she qualified for Social Security disability which terminated in June 2008. When
24 she returned to Costco full time, she worked in stocking and food-produce department at the
25 Woodinville Costco. Because her son was employed at the East Wenatchee Costco, company policy
26 would not allow her to return to her former place of employment.
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b. Respondent also had an in-home business called Creative Memories during the marriage. Since 2006 this business did not earn a significant net income.

c. The respondent salary and wage income were as follows: 2006 - \$2,932, 2007 - \$9,601, 2008 - \$25,745, 2009 - \$23,600, and 2010 - \$19,143.

d. Since March or April 2011 the respondent has earned approximately \$2,600 per month in combination with part time earnings and disability payments. As a seasonal part-time Member Service Assistant at Costco, she expects that amount of income to continue until early January 2012.

e. The respondent has also been attending school on-line through Ashford University. She has performed exemplary by earning straight A's. She has received her AA degree and hopes to complete a Bachelor's Degree in two more years.

4. Respondent Wife's Work Injury.

a. On January 11, 2009, the respondent was injured while working for Costco. This injury occurred during the marriage and before separation. She has been treated regularly by Dr. Julie Hodapp, a physician at Virginia Mason Clinic in Seattle.

b. After chiropractic treatments, the respondent returned to work; however, she was unable to work after July 17, 2009. Since then Dr. Hodapp placed work restrictions on the respondent regarding the use of her right arm, overhead weight lifting, and physical capacity. More recently, she has worked periodically in temporary positions for Costco as her injury allowed.

c. As of the date of trial, respondent's injury has prevented her from returning to her previous position with Costco. She is limited to lifting no more than 50 pounds to her waist, and

1 no more than 10 pounds above her head. She also experiences vertigo if her job requires much head
2 movement.

3 d. There is no evidence that the respondent is malingering or exaggerating her
4 symptoms. Her initial injuries were to her head, neck and back. After returning to work she
5 sustained a torn rotator cuff injury due to the repetitive movements of her job.
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7 e. The respondent's most recent doctor's visit report states:
8 "Impression: Ongoing cervical strain and rotator cuff injury with new
9 diagnosis of post concussive syndrome (vertigo), which I agree with."
10 Exhibit 9(u).

11 Respondent's most recent physical therapy report states: "Continue with treatment." Physical
12 Therapist, Doug Harris is hopeful respondent's shoulder injury will cease requiring treatment in the
13 near future.
14

15 5. Maintenance and Attorney Fees.

16 a. This court ordered temporary maintenance of \$735 per month beginning
17 January 1, 2010. The amount was reduced to \$635 per month beginning March 10, 2010.
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19 b. By order dated July 8, 2010, the amount of unpaid maintenance was \$3,175.
20 The court ordered the petitioner/husband to pay the respondent's attorney's fees and costs of \$776
21 based on his failure to pay her maintenance. The petitioner paid \$3,951 to the respondent on or
22 before July 9, 2010. The petitioner's temporary maintenance obligation was terminated after
23 November 2010. Maintenance for August through November totals \$2,540.
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25 c. Before trial, this court also ordered the petitioner to pay \$3,500 toward the
26 respondent's attorney's fees. This court ordered petitioner to pay an additional \$300 for
27 respondent's attorney's fees relating to the petitioner's motion for reconsideration. The court
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1 ordered an additional \$500 in attorney fees for the respondent/wife after the petitioner was found in
2 contempt for failing to pay the maintenance the first two months after entry of the order.
3 Consequently, the court ordered the petitioner/husband to pay a total of \$4,300 in attorney's fees to
4 the respondent/wife.

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6 d. The court ordered the respondent to pay the petitioner's attorney's fees as a
7 sanction for a late continuance of the trial in the amount of \$2,800. The court allowed this amount to
8 offset the amount of fees and maintenance the husband owed the wife. Therefore, as of April 20,
9 2012, the petitioner/husband still owed the respondent/wife \$4,040 ($\$2,540 + \$4,300 - \$2,800 =$
10 $\$4,040$).

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12 6. Pre-Trial Distribution of Assets.

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14 Before trial, the respondent sold a mobile home acquired during the marriage for \$30,000. She
15 was allowed the use of all of the proceeds. From the proceeds she paid her medical bills, moving
16 expenses, and attorney's fees, which depleted all the proceeds received from the sale.

17
18 7. Operation of Welton Orchards and Storage, L.L.C.

19 a. During 2006 and 2007, the respondent worked for the L.L.C. driving tractor,
20 pulling a sprayer, mowing, putting out coddling moth lures, "wrestling" bins and other typical
21 orchard work. She was paid for that work. In other years, she accompanied the petitioner tending
22 the wind machines [and other miscellaneous duties] without pay.

23
24 b. When one of the L.L.C.'s CA tenants failed to pay the rent in 2000, the L.L.C.
25 was forced to refinance to stay in business. Farm Credit required the respondent/wife to disclaim
26 any interest in the real property owned by the L.L.C. at that time before providing the financing.
27 Respondent was never asked to sign any loan documents in lieu of signing the disclaimer.
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29

1 c. Respondent believed that signing the disclaimer would avoid her having to file
2 bankruptcy if the L.L.C. was unable to financially survive even with the loan from Farm Credit. She
3 did not receive any independent legal advice before signing the disclaimer. Respondent was
4 unaware of any potential interest she had in the L.L.C. until after the date of the separation.

5 d. [The L.L.C. not only survived, it thrived.] While Mel and Lillian Welton have
6 not been forthcoming with all of the financial records of the L.L.C., a number of the L.L.C.'s tax
7 returns were admitted into evidence. These records show the following: Total sales income for the
8 L.L.C. in 2010 was \$774,342. [Taxable income was <\$115,165>] In 2010, the L.L.C. income from
9 the rental of its CA space was \$597,665. In 2010 the L.L.C.'s net rental income was \$250,452. Of
10 this amount, \$82,649 was the petitioner's share. The petitioner only received draws amounting to
11 \$42,570 that same year.]

12 e. [In 2009, the L.L.C.'s net rental income from the CA facility was \$392,648. The
13 petitioner/husband's share was \$129,574. He received draws amounting to just \$42,768 that year.]

14 f. The income tax returns for the L.L.C. also indicate the L.L.C. has "other
15 investments" in addition to the land and improvements. No other investments were reported in the
16 years 2003-2006. In 2007, "other investments" began at \$12,587 in the beginning of the year and
17 increased to \$274,706 at the end of the year. These other investments were worth \$305,083 at the
18 beginning of 2009 and were worth \$487,599 at the end of 2010. The tax returns do not specify what
19 are these investments.

20 g. At the beginning of 2003, the partners' capital accounts were <\$239,182>. By
21 the end of that year they were <\$347,088>. By the end of 2004, the partners' capital accounts were -
22 \$207,083; at the end of 2005, they were <\$257,630>. At the end of 2006, they were <\$133,023>,
23

1 and by the end of 2007, the partners' capital accounts had increased to \$40,518. That amount grew
2 to \$266,769 by the end of 2008/beginning of 2009. The accounts again grew from \$274,139 at the
3 end of 2009 to \$357,886 at the end of 2010. [Thus, during the marriage, the partners' capital
4 accounts grew from a low of <\$347,088> to about \$270,000 in March 2009, an increase of over
5 \$600,000.]

6
7 h. The petitioner/husband supervises all of the L.L.C.'s employees, including as
8 many as 50 during harvest. He worked exclusively for the orchard during the entire marriage. He
9 was on call 24/7 and worked 12-16 hours days at peak times, including the weekends. His last
10 vacation was in 2009.

11
12 i In 1999, Lillian Welton had health problems, and she stopped working for the
13 L.L.C., other than doing payroll. Mel Welton also cut back and occasionally worked in the
14 warehouse and helped during harvest. During the marriage, the petitioner/husband's job duties
15 increased over time as he took up the slack in the CA warehouse, and took over equipment
16 maintenance in addition to his duties of running the orchard.

17
18 j. The L.L.C. currently pays the petitioner \$2,000 per month to run the entire
19 orchard and CA warehouse operations, while his mother and father keep the books.
20 Petitioner/husband is the operations manager for the L.L.C., and his father, Mel Welton, is the
21 business manager.

22
23 k. One of the year around employees of the L.L.C., Vincente Cruz, whose
24 supervisor is the petitioner/husband earns about \$1,900 per month plus similar free housing as
25 petitioner receives. Mr. Cruz only has to pay his power and water bill. In 2009, the L.L.C. paid
26 petitioner \$3,000 per month to run the entire operation. This amount was decreased to \$2,500 per
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1 month in January 2010, then to the current \$2,000 per month. Prior to separation, petitioner and
2 respondent expected to eventually take over the operation of Welton Orchards and Storage, L.L.C.
3 when Mel and Lillian Welton retired ~~when~~ *were no longer able to do so.*

4 8. Husband and Wife's Miscellaneous Assets.

5 a. Petitioner's whole life insurance policy was worth \$230 at the time of
6 separation. Petitioner owned a Harley Davidson motorcycle, but he transferred title to his brother
7 after separation and after the court used it as leverage to have the petitioner pay some of his
8 maintenance obligation. Petitioner also has about \$1,000 in other household goods, not listed on the
9 property matrix.

10 b. Respondent ~~has~~ *will* own as her separate property 1351 Outlook Road, Outlook,
11 Washington, after her father passes away. Her father is 76 years old and has suffered strokes and has
12 dementia. The current assessed market value is \$148,200.

13 c. When the respondent and her family came to pick up her household goods from
14 the family home, the petitioner/husband was less than accommodating and unreasonable.
15 Consequently, respondent did not receive her property and incurred \$45.56 in unnecessary moving
16 expenses.

17 d. There was insufficient evidence as to the condition of the respondent's property
18 before petitioner put a portion of it in storage. Consequently, the court cannot find that there was
19 significant, measurable damage to the property when it was found in storage that could be
20 attributable to the actions of the petitioner.

21 9. Future Maintenance.

1 Petitioner/husband's living expenses exceed his current level of pay/draw decided upon by the
2 majority owners of the L.L.C.

3 10. Attorney Fees and Costs.

4 Because the respondent's appraiser was denied access to the property of the L.L.C., she
5 incurred \$1,701 in unnecessary expenses.
6

7 Based on the above Findings of Fact, the court reaches the following

8 CONCLUSIONS OF LAW:
9

10 A. The court concluded that RCW 26.09.080 provides in part:

11 In a proceeding for dissolution of the marriage . . . the court shall,
12 without regard to misconduct, make such disposition of the property and the
13 liabilities of the parties, either community or separate, as shall appear just and
14 equitable after considering all relevant factors including, but not limited to:

- 15 (1) The nature and extent of the community property;
- 16 (2) The nature and extent of the separate property;
- 17 (3) The duration of the marriage . . . ; and
- 18 (4) The economic circumstances of each spouse . . . at the time the
19 division of property is to become effective . . .

20 B. The Washington Family Law Deskbook states in part:
21

22 When community funds or labor are used to enhance the separate
23 property of a spouse, Washington courts may use equitable liens to increase the
24 size of the other spouse's award of community property. There are several
25 conditions to the imposition of an equitable lien:

- 26 • The claim for an equitable lien must be supported by direct
27 evidence of a contribution to the property on which the lien is
28 asserted. (citation omitted)
- 29 • The evidence must be more than an assertion or a claim. Some
decisions have emphasized the importance of documentary
evidence. (citation omitted) The evidence should be specific and

supported by precise evidence as to the value of the contribution.
(citation omitted)

- The overall circumstances of the case must establish that it is equitable to impress a lien. *Miracle v. Miracle*, 101 Wnd.2d 137, 139 (1984)

C. Cases upholding equitable lien awards also share the following characteristics:

- The beneficiary of the equitable lien is an individual deserving of equity (e.g. the lower earner or the party with less separate property). (citation omitted).
- ...[T]he community will not be granted a lien on the increased value of a spouse's separate property business when the spouse has been paid a reasonable salary for his or her community labor invested in the business. . . [I]f the separate real property is income producing, the community's use of income from the property may negate the need for an equitable lien. (citation omitted) §30.6(1)

...

D. The community will not receive an equitable lien for contributions to one spouse's separate property if: (1) the contributions were a gift; (2) the community received an offsetting benefit from use of the property; or (3) the contributions were de minimis. *In re Marriage of Wakefield*, 52 Wn.App. 647(1988). §30.6(3).

E. Prior to *In re Marriage of Konzen*, (citation omitted), a number of Washington courts held that the court should award one spouse part or all of the separate property of the other spouse only in "exceptional circumstances." (citations omitted) However, the court in *Konzen* specifically discarded this rule, stating . . .

The character of the property is a relevant factor that must be considered, but it is not controlling. §32.3(2)

F. Legal Effect of Disclaimer.

1 The court further concludes that while the wife expressly disclaimed any interest in the real
2 property owned by the L.L.C. in 2000, the disclaimer did not involve the husband's ownership
3 interest in the L.L.C., only the real estate owned by the L.L.C. at the time. The disclaimer did not
4 qualify as a Community Property Agreement. The respondent/wife was not given the opportunity to
5 seek independent legal advice before signing. She was also unaware of any potential interest she
6 may have had in the L.L.C. due to the community's efforts at the time she signed the disclaimer.
7 Therefore, even if it were to be considered as a post nuptial agreement, it is not enforceable as one.
8

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10 G. Character of Husband's Interest in Welton Orchards & Storage L.L.C.

11 The court further concludes that the husband's interest in Welton Orchards and Storage, L.L.C.
12 is his separate property as it was owned prior to marriage and his one-third percent interest in the
13 L.L.C. was the same on the date of separation.
14

15 H. The Nature and Extent of Community Property.

16 The court concludes that Exhibit 6(M) lists the community and separate property owned by the
17 parties. With the exception of the husband's interest in the L.L.C., the value of the assets owned by
18 the parties was unsubstantial.
19

20 I. Nature and Extent of Separate Property.

21 1. [During the marriage,] the husband's work efforts were devoted exclusively to the
22 L.L.C., and the husband and wife lived a modest lifestyle while [the value of the L.L.C. increased
23 substantially. During the marriage the L.L.C. increased \$336,000 in value by the acquisition of
24 additional real estate, and \$305,083 in value of other investments. This \$641,083 total increase in
25 value was in large part due to the community efforts of Gene Welton's successful management of
26 the operations of the L.L.C.]
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2. [Furthermore, by routinely foregoing draws equal to his real estate income; that is, agreeing to be underpaid, the net capital accounts of all three owners increased substantially to about \$270,000 by March 2009 from a low of -\$347,088 at the end of 2003. This increase of over \$600,000 during the marriage, was again due in large part to the petitioner's efforts.]

3. [By devoting all of his time and work efforts during the marriage to running the operations of the L.L.C, petitioner and his parents enjoyed an increase in value of \$1,241,083 (the value of the additional real estate, \$336,000, gain in other assets, \$305,083, and increase in their capital accounts of over \$600,000). One third of that increase in value is \$413,694. Just the increase in the L.L.C.'S real estate, the other investments, and the current capital accounts (\$274,139) is \$915,222. One third of that amount is \$305,074.]

J. Current Economic Circumstances of Each Party.

1. During the marriage, the husband worked exclusively for the L.L.C. as its operations manager and for the sizeable orchard and CA facility worth several million dollars. [The husband was grossly underpaid at the rate of \$2,000 per month during most of 2010 and 2011, exclusive of the free housing, vehicle, fuel and other expenses paid by the L.L.C. After separation he was even more grossly underpaid, barely drawing more than his employee, Vicente Cruz. The decrease in his draws at the beginning of 2010 can only be attributable to the fact his wife was requesting maintenance. No other viable explanation was offered.]

2. The wife worked for the L.L.C. at times and was [for the most part] compensated for her work. Her primary occupation was with Costco, but due to an industrial injury, she has not yet returned to her full-time position.

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L. The parties marriage is irretrievably broken and the court should enter a decree dissolving their marriage and dividing their assets and liabilities.

M. The parties are awarded the community property as set forth in the attached matrix. The petitioner/husband's net community property award is <\$17,395>, and the respondent/wife's net community property award is \$3,853.

N. Separate Property Lien.

1. The primary issue in this case is whether it is a fair and equitable distribution to award the petitioner all of his interest in the L.L.C., or whether the respondent should receive a judgment amount and/or equitable lien against the petitioner's ownership interest in the L.L.C. As noted above, even if the respondent/wife is not entitled to an equitable lien against the petitioner/husband's interest in the L.L.C., she still may be entitled to an award of a portion of the husband's separate property. While the wife testified that she and the petitioner dreamed of taking over the business, once the petitioner/husband filed for divorce, that dream ended and the respondent cannot now reasonably expect an award that would fulfill her earlier dream. However, it is abundantly clear that all of the petitioner's work efforts were exclusively for the L.L.C. [It is also clear that as a result of the petitioner's efforts, the value of the L.L.C. was significantly enhanced.] The L.L.C. went from close to filing bankruptcy to now being worth over \$5,000,000 during the course of the marriage. The court concludes [the draws that were paid to the petitioner were unreasonable considering the amount of time and effort the petitioner spent in running the operations of the L.L.C. This conclusion is inescapable given the latest draw being paid to husband is essentially equivalent to one of the employees who also receives free housing and other benefits.]

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2. Furthermore, as a direct result of the low amount drawn by the petitioner, the financial condition of the L.L.C. has greatly improved. The L.L.C. acquired \$336,000 of additional real estate (this amount excludes the acquisition of the Stimus property in the amount of \$235,000) during the marriage. The partners' capital accounts grew by more than \$600,000 during the marriage, and the L.L.C. other investments increased by over \$300,000.]

3. Supporting the award of a judgment amount and/or equitable lien against the petitioner/husband's ownership interest in the L.L.C. in favor of the respondent/wife is also equitable. Her actual earnings (excluding disability payments) are significantly less than the petitioner/husband's earnings. She is temporarily disabled. She was forced to liquidate the largest community asset to finance this litigation after the petitioner/husband repeatedly refused to pay amounts ordered by the court and exerted little, if any effort to allow access to the property and financial records for the respondent's appraiser and accountant to review.

4. While the community did receive an offsetting benefit of living on the L.L.C.'s property rent and utility free, [this benefit is not enough when one considers the same benefit was provided to at least one employee and the separate estate of the petitioner/husband grew in an amount between \$305,07 and \$413,694.]

5. Since the transfer ownership interest in the L.L.C. is limited by Article 9 of the Limited Liability Agreement between the petitioner and his parents, the court will not award a portion of petitioner's separate property to the respondent. Instead, a judgment will be entered against the petitioner which shall also become an equitable lien on his ownership interest in the L.L.C.

FOR & COL- Page 15

0-000000167

LAW OFFICE OF EYLE D. RUCK, P.A.
221 South Main Street
Wenatchee, WA 98801
(509) 662-5333
FAX (509) 663-7366

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6. Because the respondent/wife received about \$10,000 more of the community property estate than the petitioner/husband, petitioner/husband may retain \$10,000 more of the amount of increase to his separate estate which estimated to be \$360,000. Consequently, an equitable award to the respondent should be in the amount of \$175,000, or \$10,000 less than the petitioner's share of the increase in his separate estate to achieve an approximate 50/50 split overall. Therefore, the judgment/equitable lien/charging order in favor of the respondent/wife shall be in the amount of \$175,000.

10 O. Maintenance.

11 [Respondent has proven a need for maintenance for the next two years; however, because the
12 petitioner/husband is underpaid and his parents' control what draws the petitioner may receive, the
13 respondent has failed to prove that the petitioner has a current ability to pay maintenance.
14 Consequently, no additional maintenance will be ordered.
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16 P. Attorney Fees. *to*

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18 1. Thus far the L.L.C. has paid petitioner/husband's attorneys' fees in excess of
19 \$70,000. While the petitioner says it is a loan from the L.L.C., there is *only one* promissory note, nor has
20 *any* the loan appeared on any of the financial statements of the L.L.C. that were produced and admitted
21 into evidence. Given the closely held nature of the corporation and the unwillingness to be
22 forthcoming with complete financial statements, it is unlikely petitioner will have to pay his
23 attorneys' fees at all. Furthermore, the petitioner refused to provide complete financial records for
24 the L.L.C. and did nothing to provide access to the CA warehouse for the respondent's appraiser
25 prior to trial because purportedly his parents told him not to allow access.
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28 ** and no payments have been made on it, to*

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2. The respondent, on the other hand, sold her mobile home to acquire sufficient funds to retain an accountant and an attorney to represent her in this dissolution. Despite court orders to the contrary, the petitioner has failed to pay the respondent \$4,040 in maintenance and attorney's fees. Petitioner shall also pay respondent \$1,746.56 for the wasted moving and appraiser expenses incurred by wife due to petitioner's unreasonable conduct. Consequently, the judgment against the petitioner should be increased to a total of \$180,786.56. The respondent shall also be awarded an additional amount for a portion of her attorney's fees. The amount of additional attorney's fees will be determined at the time of presentment. The court will review the fees incurred by the respondent and what amount remains unpaid before deciding the appropriate amount.

DATED this 13th day of Aug 2012.



T.W. SMALL, Superior Court Judge

Presented by:
LAW OFFICE OF KYLE D. FLICK, P.S.

By Kyle D. Flick
KYLE D. FLICK, WSBA #314963
Attorney for Respondent/Wife

Approved as to Form; Notice of
Presentation Waived by:
JEFFERS, DANIELSON, SONN & AYLWARD, P.S.

By _____
MICHAEL E. VANNIER, WSBA #30238
Attorney for Petitioner/Husband

0-000000169

In Re the Marriage of: GENE WELTON and MARINA WELTON

ASSETS Page Two

Item No.	All Real & Personal property year of acquisition; all debts and adjustments	Present Possession (H/W)	Acquisition Cost	Husband's Present Value (w/o encumbrances) & proposed distribution		Wife's Present Value (w/o encumbrances) & proposed distribution		Court Distribution (H/W)	
				To H	To W	To H	To W	H	W
23	1995 Artic Cat snowmobile	Husband				2,000		2000	
24	Bedroom set (complete)	Husband					1,700		1700
25	Futon	Husband					75		75
26	Dining Room table (oak)	Husband					150		150
0	Christmas Decorations obtained during marriage	Husband				2,000	300		2300
0000000171	Modular Home					(300,000)	300,00		30000
	Creative Menovics Business Equipment					840,250	316,080		100
	A's Life Insurance							230	

2,230.00 34,325.00

In Re the Marriage of: GENE WELTON and MARINA WELTON

DEBTS

Item No.	All <u>Real & Personal</u> property year of acquisition; all debts and adjustments	Present Possession (H/W)	Acquisition Cost	Husband's Present Value (w/o encumbrances) & proposed distribution		Wife's Present Value (w/o encumbrances) & proposed distribution		Court Distribution (H/W)	
				To H	To W	To H	To W	H	W
1	Costco American Express @3/2009	Husband				18,548		15,200	
2	Cabel's Visa @ 3/2009	Husband				9,387		9,200	
3	Cashmere Valley Bank Visa @3/2009	Husband				3,015		-0-	
	Cashmere Valley Bank Mastercard @ 3/2009	Husband				1,298		-0-	
	Washington Trust Mastercard @3/2009	Husband				7,086		5000	
	AAA Financial Services (debts on car, Creative Mem., clothes, food, consol.)	Wife					24,000		17,341
	Costco American Express @ separation	Wife					34,000		27,426
	Total					(39,334)	(58,000)	27,400	44,767
	<i>Net community property</i>							<i><17,341></i>	<i>3853</i>
	<i>Total value of community estate</i>								<i><17,341></i>
	<i>Total value of H's separate estate</i>								<i>1,022,000</i>