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## I. INTRODUCTION

In April of 1988, Mr. Lester Kile, Ms. Jeannie Kile's father, leased 1,200 acres of farm ground to her as "her sole and separate property."

Mr. Lester Kile and Ms. Jeannie Kile both testified that it was their individual intentions that Mr. Gordon Kendall would have no interest in the leases. No consideration was paid for the leasehold interests. No evidence to the contrary was presented by Mr. Kendall.

The leased ground was farmed by Mr. Kendall. Ms. Kile held a full time job outside of the farming operation. Both Ms. Kile and Mr. Kendall testified that he was fairly compensated / received a reasonable wage for his labors on the farm, and that he was paid directly from the farm income.

All farm income was deposited into designated farm bank accounts that were used exclusively as depositories for farm income alone. All farm expenses, including Mr. Kendall's wages, were paid from these accounts. No evidence to the contrary was presented by Mr. Kendall.

In addition to paying all farm related expenses, there were sufficient funds generated from farming activities to purchase substantial farm equipment from Mr. Lester Kile, as well as 317 acres of farm ground commonly referred to as the "Flood ground." These purchases were all

made by Ms. Kile directly from funds held in the farm bank accounts. No evidence to the contrary was presented by Mr. Kendall.

Additionally, Mr. Lester Kile and Ms. Jeannie Kile both testified that the sale of the farm equipment from Mr. Lester Kile to Ms. Jeannie Kile was intended to be a sale to her alone, as her separate property, and that the debt forgiven by Mr. Lester Kile on the purchase balance was a gift from him to her alone. No evidence to the contrary was presented by Mr. Kendall.

Mr. Kendall acknowledged that all payments on the purchase of the farm equipment came from farm profits, and that there were sufficient profits to make these payments in full.

Ms. Jeannie Kile purchased the Flood ground in her name alone, dealing in "her sole and separate property." Mr. Lester Kile and Ms. Jeannie Kile both testified that the down payment on the ground was made by Mr. Lester Kile as a gift to his daughter. No evidence to the contrary was introduced by Mr. Kendall.

Mr. Kendall and Ms. Jeannie Kile both testified that the farming operation generated sufficient profits to make all land payments on the

purchase of the Flood ground, and that they were made from the farm account.

The trial court found that the leases were Ms. Jeannie Kile's separate property; that Mr. Kendall was paid a reasonable wage, and that the farm equipment and Flood ground were paid for from gifts to her and from farming profits generated from her separate property farming operation. Thus, the trial court concluded that the farm equipment and the Flood ground were Ms. Jeannie Kile's separate property.

## **II. STATEMENT OF THE CASE**

On April 15, 1988, Mr. Lester Kile and Ms. Jeannie Kile signed two leases pertaining to 1,200 acres of farm ground owned by Mr. Lester Kile (RP 75, lines 1-10). The lessee's name in both leases was "Jeannie Kendall, a married person dealing in her sole and separate property" (RP 77, lines 17-22; RP 78, lines 4-7; Exhibit P-29).

Ms. Jeannie Kile testified that she and her father, having both been previously divorced, wanted to keep the farm in the Kile family (RP 90, lines 10-14).

Mr. Lester Kile's deposition was taken for perpetuation purposes prior to trial, and admitted into evidence (RP 117, lines 2-18). He testified

that his intention was that his daughter have control of everything, and he intended that Mr. Kendall have no interest in the leases (CP 376-377; page 380, lines 10-17).

The leases were renewed verbally between father and daughter in accordance with the same terms until Mr. Kile's death (RP 95, lines 6-14; deposition of Mr. Lester Kile, pages 22-25).

The leases were typical for a farm operation. Mr. Lester Kile, as owner/ lessor, kept one-third of the farm production, and Ms. Jeannie Kile, as operator/lessee, kept two-thirds of the farm production (RP 76, lines 12-18).

Ms. Jeannie Kile testified that Mr. Gordon Kendall knew from the outset that he was not named on the leases (RP 79, lines 22-25; RP 80, lines 1-7). Mr. Kendall testified in deposition that he could not recall whether or not he was aware of the lease terms (RP 465-467).

The farm operation has been registered in Ms. Jeannie Kile's name alone, with the Farm Service Agency, since 1988 (RP 81, lines 2-9).

The farm subsidy checks issued by the Department of Agriculture have been made payable to Ms. Jeannie Kile individually since 1988 (RP 83, lines 6-24). Mr. Kendall was aware of this (RP 84, lines 5-9).

The parties' personal income tax returns have always been filed jointly since 1988. At Schedule F of the joint income tax returns, the farm income was reported, and always listed Ms. Jeannie Kile individually as the proprietor (RP 87, lines 6-12). Mr. Gordon Kendall was aware of this, and did not object (RP 87, lines 10-16).

Mr. Kendall has been issued W-2 forms for his wages as an employee of the farm each year since 1988 (RP 89, lines 12-13; RP 475, lines 12-14).

Ms. Jeannie Kile testified that Mr. Kendall was compensated fairly for his efforts on her farm (RP 89, lines 12-17).

Mr. Kendall testified in deposition that he was compensated fairly for his services on the farm (RP 478, lines 23-25; RP 479; RP 480, line 1). At trial, he changed his testimony, but acknowledged having provided testimony in his deposition to having been paid a reasonable wage (RP 484, line 25; RP 485, lines 1-3).

Mr. Kendall acknowledged that he had no written documentation that he had any ownership interest in the farming operation (RP 478, lines 18-22).

All of the farm income was deposited to accounts utilized exclusively as depositories for farm income (RP 98, lines 8-19). Ms. Jeannie Kile, who was employed outside of the farm, did not deposit her earnings to this farm account. All farm related expenses were paid from this farm account (RP 98, lines 8-25).

There was sufficient cash flow from the farm operation to pay all expenses of the farming operation, including Mr. Kendall's wages, and to additionally purchase equipment and land (RP 99, lines 12-22; RP 480, lines 3-9).

Ms. Jeannie Kile entered into an agreement with her father whereby he agreed to lease and ultimately sell substantial farm equipment to her (RP 100, lines 6-25; CP page 379).

Pursuant to the terms of this lease/option, the farm paid \$40,000 annually as an equipment lease to Mr. Lester Kile from 1989 through 1998. The payment was made from farm income (RP 119, lines 13-22).

Some payments were made toward the acquisition of this equipment from farm cash flow, but Mr. Lester Kile ultimately forgave the balance of the obligation as a gift to his daughter (RP 120, lines 1-25; RP 121, lines 1-3; CP 379, lines 15-25).

Other farm equipment was also purchased from farm profits (RP 121-122).

In 1989, Ms. Jeannie Kile purchased 317 acres of farm ground referred to as the Flood ground. The down payment was made as a gift to her from her father (RP 102, lines 23-25; CP page 382, lines 8-18). Mr. Lester Kile had formerly been farming this ground since 1955 or 1958 (RP 103, lines 17-18; CP 381, lines 17-19).

The purchase involved the acquisition of two separate parcels, commonly referred to as the Flood ground. Two separate acquisitions took place. Each real estate contract listed Ms. Jeannie Kile as the purchaser dealing in her own separate property (RP 107, lines 19-23; RP 108, lines 6-12; RP 103, lines 24-25; RP 104, lines 1-2; Exhibit P-17 and Exhibit P-24 ).

Payments on these contracts were made from farm profits (RP 106, lines 5-10).

Mr. Kendall signed a quit claim deed on both parcels at the time of closing (RP 111, lines 8-10).

Mr. Todd Carlson, a licensed CPA in the state of Washington, testified that he had analyzed the farm income and expenses for the

periods from 1989 through 2005 (RP 293, lines 6-15). He ended his analysis in 2005 in that no further equipment purchases or land payments were made after that time (RP 293, lines 15-16).

He reviewed third party source documents for farm revenues, crop sale documents, payment documents, and FSA payments. He also reviewed monthly bank statements for the farm bank accounts (RP 293, lines 6-10). He concluded that the farm income was sufficient to meet the referenced debt obligations, i.e. the purchase of the equipment and farm land (RP 307, lines 5-14). Mr. Kendall agreed with this analysis (RP 480, lines 3-9).

### **III. ARGUMENT**

The characterization of property as either separate or community, presents a mixed question of law and fact. The time of acquisition, the method of acquisition, and the intent of the donor (if gifting is an issue) are questions for the trier of fact. Whether the facts as found, support the classification of property as separate or community, is for the court to determine as a matter of law. Marriage of Martin, 32 Wash.App. 92, 645 P.2d 1148 (1982).

Both Mr. Lester Kile, as donor, and Ms. Jeannie Kile, as donee, indicated that the leases in question were intended to be Ms. Jeannie Kile's separate property (RP 90, lines 10-14; CP 376-377).

No consideration was paid for the leases (CP 537-538, paragraph 2.21(1)).

The court's characterization of these leases as Ms. Kile's separate property is reviewed de novo. In Re Marriage of Mueller, 140 Wash.App. 498, 503-04, 167 P.3d 568 (2007).

Property acquired during marriage is presumed to be community property. Mueller, supra.

A gift of property to a person with the clear intent of the donor to make a gift to that person specifically, and not to his or her spouse, is held to be that donee spouse's separate property. In re Marriage of Martin, supra, at page 95.

The presumption that property acquired during marriage is community property may be overcome with clear and convincing evidence that it is separate property. Mueller, supra.

The trial court found that the leases were given to Ms. Kile by her father without consideration (CP 537-538, paragraph 2.21(1)). The lease

documents themselves evidence the intent of Mr. Lester Kile and Ms. Jeannie Kile, that the leases be held "as her sole and separate property" (Exhibit P-17; Exhibit P-24). Mr. Lester Kile testified that, at the time, his intention was that the leases be his daughter's separate property.

When a trial court enters Findings of Fact and Conclusion of Law, appellate review is limited to determining whether substantial evidence supports the findings and, if so, whether they support the trial court's conclusions of law and judgment. Saviano vs. West Port Amusements, Inc., 144 Wash.App. 72, 180 P.3d, 874 (2008).

The trial court's findings and conclusions on the issue of characterization of the leases is supported by the record and is otherwise reasonable. Saviano, supra.

Appellant's brief repeatedly makes reference to Ms. Kile's attorney's stipulation regarding the lack of a characterization agreement between the parties. This stipulation itself is found at page 277, line 25, of the Report of Proceedings as follows:

We will stipulate that there are no status agreements relative to characterization, no community property agreements, and no separate property agreements.

This stipulation was made during counsel's cross examination of Ms. Kile. The issue being discussed during that cross examination was whether or not Ms. Kile and Mr. Kendall had signed any agreements between themselves as to the characterization of property (RP pages 277-278).

The parties, in fact, did not jointly execute a community property agreement or a separate property agreement, and this was the basis for the stipulation.

Mr. Kendall, thus, argues:

Without a property agreement, then the presumption in Mr. Kendall's favor cannot be overcome by Jeannie Kile.  
(Appellant's Brief at page 22.)

Although an agreement between spouses relative to characterization of an asset may prove helpful to a trial court in its deliberations regarding characterization, the absence of an agreement does not preclude the court from considering other evidence relevant to the characterization of an asset. Evidence introduced to rebut the community property presumption must be clear and convincing, but it is certainly not mandatory that spouses agree in writing to a characterization, in order to

rebut said presumption. Matter of Marriage of Olivares, 69 Wash.App. 324, 848 P. 2d 1281 (1993).

Mr. Kendall's labor on the farm during the marriage is community property. Hinson vs. Hinson, 1 Wash.App. 348, 352, 461 P.2d 560 (1969).

Contrary to Mr. Kendall's argument in his brief, Ms. Kile does not argue that Mr. Kendall's wages are separate property. Therefore, Mueller, supra, is distinguishable on this point.

The trial court having concluded that the farm leases were Ms. Jeannie Kile's separate property, correctly concluded that the rents, issues, and profits from her separate property were also her separate property, so long as Mr. Kendall was paid a reasonable wage for his efforts on the farm. Hamlin vs. Merlino, 44 Wash.2d 851, 272 P.2d 125 (1954).

Both Ms. Kile and Mr. Kendall (during his deposition) testified that he was reasonably compensated for his community labors on the farm during the marriage. Although Mr. Kendall recanted his deposition testimony, he provided no evidence at trial as to what reasonable compensation should have been.

With the community having been reasonably compensated and fairly paid for Mr. Kendall's labor, the balance of the farm income / profits

remained Ms. Kile's separate property. Pollock vs. Pollock, 7 Wash.App. 394, 499 P.2d 231 (1972); Hamlin vs. Merlino, supra.

The trial court entered substantial Findings of Fact and Conclusions of Law relative to the characterization of the funds utilized to purchase the Flood ground (CP 538, paragraphs 2.21(9)(10)(11)). The trial court correctly concluded that Ms. Kile applied her separate property farm profits to acquire the Flood ground, and that the gifted down payment was made by way of a gift to her from her father.

The trial court correctly concluded that the Flood ground was Ms. Kile's separate property. Hamlin vs. Merlino, supra.

Further, Ms. Kile's evidence regarding Mr. Kendall's executing quit claim deeds on the Flood property was determined by the court to be irrelevant to the characterization issue (CP 540, paragraph 3.8(7)). The trial court based its characterization on the sources of the funds utilized to make the purchase and, having characterized the sources as Ms. Kile's separate property, correctly concluded that the acquisition was also separate property. In re Estate of Borghi, 167 Wash.2d 480, 219 P. 3d 932 (2009).

The burden of overcoming the presumption of community property is successfully achieved by introducing clear and convincing evidence that the acquisition was paid for from separate property funds. In re Estate of Borghi, supra.

Again, the quit claim deeds signed by Mr. Kendall on the Flood ground were found by the court to be irrelevant as to the characterization issue (CP 540, paragraph 3.8(7)). The trial court, at In re Marriage of Marzetta, 129 Wash.App. 607, 120 P.3d 75 (2005), considered the quit claim deeds in its characterization analysis. Therefore, In re Marriage of Marzetta, supra, is distinguishable.

The compensation paid to Mr. Kendall was deemed reasonable by Mr. Kendall himself. No evidence was introduced by Mr. Kendall to the contrary. In Marzetta, supra, Mr. Marzetta sought to have bonuses paid during the marriage (and, thus, community income) re-characterized as stock dividends (and, thus, separate property), all contrary to the terms of a prenuptial agreement.

Here, the trial judge appropriately found that Mr. Kendall's efforts on behalf of the community were reasonably compensated and, thus, the profits of the farming operation were Ms. Kile's separate property. These

facts are clearly distinguishable from Marzetta, supra, and are consistent with the rulings in Pollock, supra, and Hamlin, supra.

The court's conclusion that the Flood ground was purchased during the marriage with Ms. Kile's separate property was based upon sufficient evidence to support the Findings of Fact and the Conclusions of Law. Saviano, supra.

Mr. Kendall's argument that Ms. Kile is "trying to impute a Property Agreement to Gordon Kendall" is nothing short of absurd. The stipulation placed on the record at trial was intended to eliminate counsel's confusion permanently on this point (RP 277, line 25). Nothing in the record, or in the trial court's Findings or Conclusions, alludes directly or indirectly to a property agreement between the parties.

The characterization sought by Ms. Kile at trial, and as ultimately reached by the trial court in its Findings of Fact and Conclusions of Law, was not based on agreement between the spouses. Thus, Marriage of Matson, 107 Wash.2d 479, 730 P.2d 668 (1986), is distinguishable. Matson involves the enforceability of a prenuptial agreement. Again, any references to cases involving the validity of prenuptial agreements have no relevance to the issues in this case.

As to the acquisition of the farm equipment, the court again made significant Findings of Fact and Conclusions of Law on this point (CP 538, paragraph 2.21(1)(2)(3)(4)(5)(6)). This included findings that the payments on the farm equipment were made from farm profits and from a gift of the remaining balance by Mr. Kile to his daughter (CP 538).

Mr. Kendall argues that Ms. Jeannie Kile has not overcome the presumption that the down payment was a "gift to the community." (See Footnote 1.)

The trial court's findings relative to the gifting and the application of the funds is supported by substantial evidence. Saviano, supra. The funds were not commingled (RP 98, lines 8-19; CP 537, paragraph 2.21(2)(3)(4)).

Relative to Mr. Kendall's request for spousal maintenance, the trial court entered the following Findings of Fact at paragraph 2.21 (20):

Mr. Kendall is currently unemployed. The court makes no finding as to his abilities in terms of working. There is no evidence that he is particularly motivated or not motivated. He has requested spousal maintenance. He did not testify as

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1 The Appellant cites In re Marriage of Chumbley, 150 Wash.2d 1, 5-6, 74 P.3d 129 (2003) ("Property acquired with separate funds during a marriage is presumed to be a gift to the community," at "6", see Appellant's Brief at page 34.) This is a serious misstatement of the law. Chumbley, supra, correctly cited at page 6 states, "Property acquired during marriage has the same character as the funds used to purchase it."

to how much or for how long, and he did not testify for what purpose he wanted it. (CP 539, paragraph 2.21(20)).

The trial court awarded to Mr. Kendall a disproportionate share of the community net worth. Mr. Kendall received \$484,903 of community property, and Ms. Kile received \$110,337 of community property. The trial court explained its rationale as follows:

The court has awarded to Mr. Kendall a disproportionate share in the community property because of the significant amount of separate property being awarded to Ms. Kile, the nature of those, the liquidity of some of those, the non-liquidity of some of those, and the fact that she will continue to earn and will continue to benefit from the farm and the work that is being done on the farm. (CP 541, paragraph 3.8(11)).

Mr. Kendall failed to file a Financial Declaration with the trial court relative to his need for spousal maintenance. He did not testify as to any financial need.

The trial court did award to Mr. Kendall a disproportionate amount of the community property.

An award of spousal maintenance, at a minimum, requires a showing that there is a need for spousal maintenance (RCW 26.09.090(1)).

Mr. Kendall has failed to introduce any evidence of need.

Furthermore, the trial court, through its disproportionate award of community property to Mr. Kendall, has appropriately considered that no spousal maintenance is being awarded. The trial court appropriately considered the division of property when determining spousal maintenance. In re Marriage of Rink, 18 Wash.App. 549, 571 P.2d 210 (1977).

Relative to Mr. Kendall's request for attorney's fees, the trial court found that Mr. Kendall had the capacity to pay his own fees (CP 537, paragraph 2.15). Given the fact that Mr. Kendall was awarded \$484,903 in community property, \$3,450 of his wife's separate property, and \$157,000 of his separate property, the court's finding that he was capable of paying his own attorney's fees was certainly based upon substantial evidence.

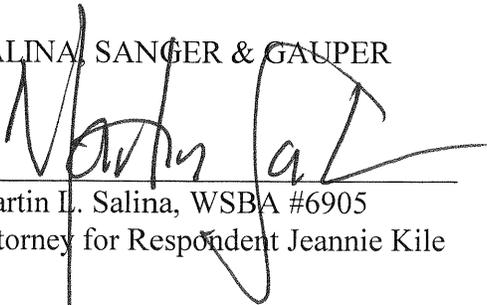
#### IV. CONCLUSION

The trial court's judgment in this matter should be affirmed.

DATED this 3<sup>rd</sup> day of January, 2014.

Respectfully submitted,

SALINA, SANGER & GAUPER

  
Martin L. Salina, WSBA #6905  
Attorney for Respondent Jeannie Kile

**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on the 3<sup>rd</sup> day of January, 2014, the foregoing Brief of Respondent was filed with the above-named Court and delivered to the following persons in the manner indicated:

Craig Mason	VIA REGULAR MAIL	<input type="checkbox"/>
1707 W. Broadway	VIA CERTIFIED MAIL	<input type="checkbox"/>
Spokane, WA 99201	HAND DELIVERED	<input checked="" type="checkbox"/>

  
\_\_\_\_\_  
Deborah G. Simpson