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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

APPELLATE CASE NO. 315843

SANDRA KAY HUNT, Respondent
v.
SAMUEL EARL HUNT, Appellant

APPEAL FROM THE SUPERIOR COURT OF
WASHINGTON FOR WHITMAN COUNTY

HONORABLE DAVID FRAZIER, JUDGE
Case No. 12-3-00030-3

BRIEF OF RESPONDENT SANDRA KAY HUNT

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RESPONDENT SANDRA HUNT'S RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court did not err in denying appellant Mr. Hunt's Motion to Reopen, Reconsider and to Clarify on March 15, 2013.
2. The trial court did not err in entering its findings of fact, conclusions of law and judgment, and particularly did not err in its findings related to Mr. Hunt's position that there was not an allocation of substantial community liabilities that existed as of the date of separation.

MRS HUNT'S RESPONSES TO MR. HUNT'S ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issue No. 1 (related to Assignment of Error No. 1)

The trial court did not abuse its discretion in refusing to accept clarifying documentation to rehabilitate the alleged lack of credibility of Mr. Hunt.

Issue No. 2 (related to Assignment of Error No. 2)

The trial court did not abuse its discretion in refusing to consider the following alleged community indebtednesses: 1) an amount of $46,410 allegedly owed to Walt Miller; 2) an amount of $91,245.00 allegedly owed to Walt Miller (representing one-half of a total bill of $182,490.00); 3) an amount of $21,317.37 which is allegedly a community obligation for an amount owed by C&L Lockers.

The court's failure to allocate the alleged community indebtedness of $158,972.37 did not affect the just and equitable disposition of property and liabilities of the community.

STATEMENT OF THE CASE

The parties were married on April 15, 2006 and separated on September 11, 2011. A dissolution of marriage trial in this matter was held before Judge David Frazier in Whitman County Superior Court on December 3, 2012. At the conclusion of argument, the court took its decision under advisement. On January 31, 2013, the court issued a Memorandum Decision setting forth in relevant part the court's decisions related to community liabilities at issue in this appeal.

Following the court's decision of January 31, 2013, both parties filed motions for reconsideration. Sandra Hunt filed a Motion for Reconsideration on February 13, 2013 seeking reconsideration of the omission of one credit card debt. Samuel Hunt filed a Motion to Reopen, Reconsider and to Clarify on February 26, 2013. Mr. Hunt sought reconsideration on six points related to the court's decision of January 31, 2013 regarding the community property and community liabilities of the parties.

The court held a hearing on both parties' motions for reconsideration on March 15, 2013. At this hearing, after arguments and proffered documentary evidence by both parties, the court granted Mrs. Hunt's motion related to credit card debt, and granted Mr. Hunt's motion related to one asset and its related liability (which related to two of Mr. Hunt's six points in his Motion for Reconsideration). The court denied Mr. Hunt's motion in regards to the remaining alleged community property/community liabilities at issue in his motion. On March 15, 2013, the court entered a Decree of Dissolution, incorporating the court's decisions of the hearing on this date.

2013 regarding the community property and community liabilities of the parties.

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Thereafter, Mr. Hunt appealed the trial court's decisions on two of the six points in his motion for reconsideration: 1) the trial court's refusal to allocate as community liability two alleged debts to Walt Miller, a livestock dealer -- $46,410.00 and $91,245.00, for a total of $137,655.00; and 2) the trial court's refusal to allocate as a community liability an alleged total debt of $21,317.37 owed by C&L Lockers, a former business interest of Mr. Hunt.

ARGUMENT

The issue on appeal is whether the trial court erred in its allocation of community liability for three alleged debts, argued by Mr. Hunt as

community liability, totaling $158,972.37. The trial court declined to allocate these as community liability, citing weak and poor evidence, failure to provide at trial evidence that was available, and lack of credibility of the evidence provided. For reasons set forth more fully below, the trial court's decisions should be upheld on appeal. The trial court did not abuse its discretion in its findings. Mr. Hunt failed to carry his burden of providing substantial and persuasive evidence at trial.

Standard of Review

The standard of review has been recently well-summarized in: Buck Mt. Owners' Ass'n v. Prestwich, 174 Wn. App. 702, 713-14, (2013):

> "When findings of fact and conclusions of law are entered following a bench trial, appellate review is limited to determining whether the findings are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law and judgment." Sunnyside Valley Irrigation Dist. v. Dickie, 111Wn. App. 209, 214, 43 P.3d 1277 (2002).
>
> "Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." Ridgeview Props. v. Starbuck, 96Wn.2d 716, 719, 638 P.2d 1231 (1982).
>
> "This court defers to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence and credibility of the witnesses. Boeing Co. v. Heidy, 147 Wn.2d 78, 87, 51 P.3d 793 (2002).
>
> "In determining the sufficiency of the evidence, this court need only consider evidence favorable to the prevailing party. Bland v. Mentor, 63 Wn.2d 150, 155, 385 P.2d 727 (1963).

> "There is a presumption in favor of the trial court's findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence. Fisher Props., Inc. v.A rden-Mavfair, Inc., 115 Wn.2d 364, 369, 798 P.2d 799 (1990).
>
> "Unchallenged findings of facts are verities on appeal. Cowiche Canyon Conservancy v. Boslev, 118Wn.2d 801, 808, 828 P.2d 549 (1992).
>
> "The appellant must present argument to the court why specific findings of fact are not supported by the evidence and must cite to the record to support that argument," or they become verities on appeal. Inland Foundry Co. v. Dep't -8-67714-4-1/9 of Labor &Indus., 106 Wn. App. 333, 340, 24 P.3d 424 (2001). Such unsupported arguments need not be considered. Bryant v. Palmer Coking Coal Co., 86 Wn. App. 204, 216, 936 P.2d 1163 (1997).

Further case law establishing standards of review from Buck Mt. Owners' Ass'n include:

> "The trial court's credibility determinations and resolution of the truth from competing evidence will not be disturbed on appeal. Garofalo v. Commellini, 169 Wash. 704, 705, 13 P.2d 497 (1932); Du Pont v. Dep't of Labor &Indus., 46 Wn. App. 471, 479, 730 P.2d 1345 (1986). Supra at 720.
>
> "Where the trial court has weighed the evidence, "[w]e will not substitute our judgment for the trial court's, weigh the evidence, or adjudge witness credibility." Greene v. Greene, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). Supra at 726.

In Meridian Minerals Co. v. King County, 61 Wn. App. 195, 203, 810 P. 2d 31 (1991), additional relevant standards of review are found on

the issue of whether and what weight to ascribe to evidence not submitted at trial but sought to be admitted in a post-trial proceeding:

> "Holaday v. Merceri, 49 Wn. App. 321, 330, 742 P. 2d 127, review denied, 108 Wn.2d 1035(1987) held "when a motion for reconsideration is brought after a trial has been completed, the court must base its decision on evidence heard at trial. Certainly both a trial and a summary judgment hearing afford the parties ample opportunity to present evidence. Unless discovered after the opportunity passes, the parties should generally not be given another chance to submit additional evidence."

> "Motions for reconsideration are addressed to the sound discretion of the trial court and will not be reversed absent a clear or manifest abuse of that discretion." Id.

ISSUE NO. 1.

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ACCEPT CLARIFYING DOCUMENTATION TO REHABILITATE THE ALLEGED LACK OF CREDIBILITY OF MR. HUNT.

Mr. Hunt's Motion to Reopen, Reconsider, and To Clarify, was flawed in that it did not set forth grounds as to why the court should reconsider its ruling. In his motion, Mr. Hunt did not state upon what grounds he was requesting the court to reconsider but only gave a list of the debts that Mr. Hunt asked the court to reconsider. In asking a trial court to reconsider its ruling, "the litigant must identify the specific

reasons in fact and law as to which ground the motion is based." Fishburn v. Pierce County, 161 Wash App. 452, 250 P. 3d 146, 472.

The trial court properly denied consideration of new evidence which Mr. Hunt tries to label as "rehabilitative documentation" in his Appellant's Brief. In Mr. Hunt's Appellant Brief, he argues that the court refused to consider the "rehabilitative documentation provided in the motion." (Appellant's Brief, page 10). Mr. Hunt claims that the documents provided in his Motion to Reopen, Reconsider, and To Clarify were offered to rehabilitate the credibility of Mr. Hunt. Superior Court Rule 59 lists nine grounds for Reconsideration and Mr. Hunt did not cite to any of them for support of his motion (CR 59).

If Mr. Hunt contends that CR59(4) applies to this case, and that there was newly discovered evidence which could not have with reasonable diligence be discovered and produced at trial, then this could be a ground for reconsideration. However, the invoices and email that Mr. Hunt tried to submit after the trial were evidence that reasonably could have been discovered and produced at trial; the invoices were from 2010 and 2011, and the email was purported to relate to an invoice from 2011. Further, Mr. Hunt did not attempt to provide any grounds for why this evidence might be newly discovered. Thus, Mr. Hunt failed to demonstrate, or even argue, that he met the Rule 59 criteria for reconsideration.

In Mr. Hunt's Motion to Reopen, Reconsider and to Clarify, Mr. Hunt sought to admit additional evidence related to Walt Miller transactions, as follows:

1. Another copy of Petitioner's Exhibit 6, which shows a balance sheet for Zion's bank which was presented at trial by Mrs. Hunt to show that Mr. Hunt had a separate student loan debt of $19,000. Mrs. Hunt testified only regarding the student loans in Petitioner's Exhibit 6 and Mr. Hunt did not testify at all regarding the balance sheet for Zion's bank.
2. An invoice from "Miller Lamb, Ltd. Walter H. & Connie L. Miller," showing a sale on April 13, 2011 of about 869 ewe lambs to Sam Hunt and Dillon Summers.
3. An invoice titled "Purchased from Sam Hunt," from "Miller Lamb, Ltd. Walter H. & Connie L. Miller" dated October 15, 2010.
4. An email from Ameristar Meats dated February 13, 2013 from the Accounts Receivable Manager stating the balance of the C & L Lockers account was $16,308.55.
5. A document from Dean's Distributing Inc. with a balance of $5,008.82 as of September 11, 2011.

The court properly did not consider this new evidence. There was no offer of why this evidence was not available at trial. If the evidence was

available and not offered until after the opportunity passed, the party is not entitled to submit the evidence. Fishburn, 161 Wash. App at 472.

In addition, the trial court noted that the additional evidence that Mr. Hunt was trying to submit at the hearing for his Motion to Reopen, Reconsider, and Clarify conflicted with the evidence that Mr. Hunt submitted at trial. The trial court specifically referred to the evidence that was offered at trial regarding the C & L Locker debt, which was Respondent's Exhibit 16 (excerpt from answers to interrogatories), and how it conflicted with this new evidence that Mr. Hunt was trying to introduce. The trial court stated regarding the proposed new evidence,

> "He [Sam Hunt] had American Meats down---he owed them $5,200 and now there's an email from American Meats saying $16,308.55, same thing with Dean's Distributing. What they have now is, what, $17,000. What he had was $5,008. He just presented weak evidence, poor evidence, and I'm not convinced that his new evidence here is any better. And the big one here is this Walt Miller contract that's being alleged. And those are substantial business debts that had very weak evidence to support those. And now, they're too late to have been submitted, what is alleged to be some contracts to support the figures that was used, but I don't feel it would be proper to allow him to reopen and allow him to argue. And I'm not even comfortable it's-with what's been presented. The wool business—I'm hearing a new—new argument with respect to that issue. It wasn't argued previously. There really isn't any evidence to support that..." (RP 3/15/13 page 26 line 19 through page 27 line 14).

The court properly did not admit this evidence, as it was furnished late, and would have been available at trial, but even if it had admitted the proffered evidence, this proposed new evidence still would not have shed sufficient light on the nature and amount of alleged Walt Miller debts.

ISSUE NO. 2

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO CONSIDER THE FOLLOWING ALLEGED COMMUNITY INDEBTEDNESSES: 1) AN AMOUNT OF $46,410 ALLEGEDLY OWED TO WALT MILLER; 2) AN AMOUNT OF $91,245.00 ALLEDEDLY OWED TO WALT MILLER (REPRESENTING ONE-HALFOF A TOTAL BILL OF $182,490.00); 3) AN AMOUNT OF $21,317 WHICH IS ALLEGEDLY A COMMUNITY OBLIGATION FOR AN AMOUNT OWED BY C & L LOCKERS.

And

ISSUE NO. 3

THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THEALLEGED COMMUNITY INDEBTEDNESS OF A TOTAL OF $158,972.37 AS DETAILED IN ISSUE NO 2 ABOVE.

Mr. Hunt seeks to overturn the trial court's decisions on the weight and credibility of evidence provided to the court at trial for three alleged community liabilities: two alleged debts to Walt Miller, a livestock dealer, and one alleged liability on behalf of C&L Lockers, a business interest of Mr. Hunt. Mr. Hunt provided limited and conflicting evidence related to these debts, including in one instance evidence that there was no community debt at all to Walt Miller. Mr. Hunt's testimony as to the existence and amounts of these debts was described by the trial court in summary as: "weak evidence, poor evidence." (RP 3/15/2013, page 26 lines 1-25, page 27 lines 1-27) It was well within the trial court's discretion to weigh evidence, make credibility determinations and resolve the truth related to these alleged liabilities in favor of a finding of no

community liability. The trial court's discretion is amply supported by the evidence and the findings of the trial court should be upheld.

A. ALLEGED WALT MILLER DEBTS

Mr. Hunt at trial provided uncertain and contradictory evidence for the debts allegedly owed to Walt Miller. Mr. Hunt provided the following:

1. Mr. Hunt testified at trial about a purchase agreement between Mr. Hunt and a business associate, Dillon Summers dated July 20, 2012, in which Mr. Hunt sold a number of items, including sheep, to Mr. Summers for about $127,000. (RP 12/3/2012, page 131 line 22 through page 140, line 8) Mr. Hunt testified as to a string of both purchases and sales of sheep. His testimony regarding the contract between himself and Mr. Summers later led to the contract being admitted into evidence as Respondent's Exhibit 7 . (RP 12/3/12, page 140, lines 6-8.) Mr. Hunt summarized the outcome of these purchases and sales by stating, "Since Dillon has purchased all of my sheep he has assumed the debt that I have between Miller…so of the hundred and twenty-seven thousand [the approximate total asset value on Exhibit 7 of items sold by Mr. Hunt to Mr. Summers] he's assumed eighty-eight thousand dollars from Walt Miller." (RP 12/3/2012, page 136, lines 4-15). Mr. Hunt then summarized and clarified in his testimony that the

assumption of the debt of eighty-eight thousand dollars to Walt Miller was Mr. Summers' partial payment to Mr. Hunt for the asset value of one-hundred twenty-seven thousand dollars from Mr. Hunt to Mr. Summers. (RP 12/3/2012, page 136, lines 4-15). Mr. Hunt also stated that he wired $66,000 to Walt Miller as a payment towards the loan to Walt Miller.

(RP 12/3/2012, page 135, lines 21-23).

Thus, Mr. Hunt's trial testimony associated with the contract between Mr. Hunt and Mr. Summers indicates that Mr. Hunt had no debt to Walt Miller at all or if there was a debt, it occurred after the date of separation of September 2011. Mr. Summers assumed a Walt Miller debt as part of a sale of assets, apparently all community assets, from Mr. Hunt to Mr. Summers and the contract between the men was dated July 20, 2012. The only testimony from Mr. Hunt at trial regarding the Walt Miller loans was this testimony where he stated that Dillon Summers was going to assume the debt Mr. Hunt had to Walt Miller.

2. Mr. Hunt submitted Exhibit 13, which is spreadsheet printouts detailing bank loan balances and transactions. (RP 12/03/12, page 145, line 20 through page 147, line 18) For this exhibit, Mr. Hunt offered no testimony at all related to Walt Miller, even though the notation "Walt Miller Sales" is listed with a $53,724.68 payment

on the loan balance on October 29, 2012 in Exhibit 13. Mr. Hunt also submitted Exhibits 14 and 15, which are identical spreadsheet printouts detailing bank loan balances and transactions. These exhibit show "Walt Miller Sales" with a $53,724.68 payment on the loan balance on October 29, 2012 also. These exhibits reveal that there were payments being made to Walt Miller but there is still the issue of what balance was owed at the date of separation if there was a balance at all owed.

Mrs. Hunt introduced exhibits that related to Walt Miller business dealings but never testified to the Walt Miller business dealings (apart from Mr. Hunt's testimony regarding Dillon Summers) and never presented evidence on point of the Walt Miller business dealings. Mrs. Hunt's evidence presented at trial however included evidence of Mr. Hunt's additional and differing valuations of the alleged liability to Walt Miller. Mrs. Hunt offered the following at trial:

1. Mrs. Hunt offered her Exhibit 6 to show that Mr. Hunt had a separate student school loan of $19,000. Mrs. Hunt's Exhibit 6 includes a Zions Bank Balance Sheet computer printout for Sam Hunt dated February 22, 2012, listing "Walt Miller lambs" as a debt of $182,490 and "Walt Miller ewes" as a debt of $46,410. Mrs. Hunt testified at trial that this balance sheet was created for the bank in about February 2012 (RP

12/3/2012, page 23, line 19- page 24, line 20). It is not clear from the trial record which party created this balance sheet. However, the balance sheet is titled "Sam Hunt."

2. Mrs. Hunt presented Exhibit 4 at trial to show the value of the family home. In her testimony, she specifically referred to a hand-written statement of value and amount owed for various assets from Mr. Hunt, with a title "e-mailed received (sic) from Sam 3-2-12". This statement lists a sheep value of $226,100 and amount owed against the sheep value of $228,000. This statement additionally lists "Walt Miller" as a $90,000 debt. Mrs. Hunt testified that this hand-written statement was written by Sam as his listing of assets and debts, and delivered to her. At trial, counsel for Mr. Hunt stated that he did not object to this hand-written statement and that it was his client's estimate of values (RP 12/3/2012, pages 20-21).

3. Mrs. Hunt presented Exhibit 29 at trial to show that Mr. Hunt sold lambs to Stanley Boyd and that the proceeds were deposited into a Zion Bank account (RP 12/3/2012, page 61, line 11, page 62 through page 63, line 12). Exhibit 29 was admitted and included a contract between Sam Hunt and Stanley Boyd. Also in Exhibit 29 was a Zions Bank transaction page for Sam Hunt's account, showing a deposit of

$91,000 on 10/14/2011, with a hand-written notation "Walt Miller down payment." There was no testimony at trial by either party as to the relative meaning of these transactions within the larger framework of buying and selling sheep to and from Walt Miller.

The evidence submitted at trial related to alleged Walt Miller debts was contradictory and uncertain. Both trial testimony and exhibits were littered with passing references to Walt Miller transactions that were never fully explained or summarized as a whole line of transactions, although it is clear from the evidence, as discussed above, that dealings with Walt Miller were a continuing phenomenon, and included both sales and purchases. There is no contract in the record if there was a Walt Miller loan as to what the original loan amount was for, the terms of the loan, any payments towards the loan, or what the balance of the loan as at the date of separation. There is simply no evidence to collaborate Mr. Hunt's claim that the community had a Walt Miller debt.

From this weak and conflicting trial evidence, Mr. Hunt seeks to cherry-pick alleged liability numbers from Petitioner's Exhibit 6, which includes a balance sheet for Zions Bank that was a document that was submitted in the trial to support that Mr. Hunt had a separate student loan debt. Mr. Hunt also tried to reintroduce this balance sheet at the hearing on his Motion to Reconsider and the court denied to accept it and any of

the additional documentation that Mr. Hunt tried to introduce because it was new evidence (RP 12/3/2012, page 25, line 19-24). Mr. Hunt states in his Appellant Brief that there was a balance of what was owed to Walt Miller on the February 22, 2012 balance sheet, but this balance sheet was not supported by any other document, contract, any testimony, or any evidence at trial. Neither Mr. Hunt nor Mrs. Hunt testified as to the Walt Miller loans on this particular balance sheet.

Also, it is important to note that the trial court determined the date of separation was September 11, 2011. The balance sheet for Zions Bank that Mr. Hunt relies on is five months later, after the date of separation. We have no idea what kind of transactions occurred or what loans or payments were made between September of 2011 and February of 2012.

In addition, these balance sheet numbers in fact were flatly contradicted on the issue of the amount of liability owed to Walt Miller by Mr. Hunt's testimony at trial when he testified that Dillon Summers had taken over the debt Mr. Hunt had to Walt Miller. Also, evidence in the record showed a different amount owed to Walt Miller by Mr. Hunt just two weeks later by Mr. Hunt's own hand-written summary (Petitioner's exhibit 4 in which Mr. Hunt states that $90,000 is owed to Walt Miller). Mr. Hunt however insists that the court must rely on these unverified balance sheet numbers, which happen to be the highest of the various numbers and thus most to his benefit in allocating community liability,

and disregard the many other Walt Miller numbers floating around. This is contrary to reason and to well-established case law and standards of review of evidence. In summary, the trial court properly, within its discretion, and according to well established rules of evidence, did not allow Walt Miller alleged debts to be considered as community liabilities.

B. ALLEGED C & L LOCKER DEBTS

Mr. Hunt at trial presented a single exhibit for alleged debts owed by C&L Lockers, for which the community was allegedly liable. In Respondent's Exhibit 16, which is an excerpt from Mr. Hunt's response to an interrogatory from Mrs. Hunt on the debts associated with C&L Lockers, Mr. Hunt lists only five business names and amounts owed – totaling $28,500. (CP page 23). At trial, Mrs. Hunt objected to Mr. Hunt's introduction of Exhibit 16, since there were no accompanying proofs or records of C&L Locker debts and how they might be construed as a community liability, but simply Mr. Hunt's statements. The court allowed the admission of Exhibit 16 primarily as an illustrative of Mr. Hunt's verbal testimony (RP 12/3/2012, page 152, lines 4-6).

In Petitioner's Exhibit 4, Mr. Hunt listed, in a hand-written statement which was an email to Mrs. Hunt from Mr. Hunt on March 2, 2012, a total of $45,000 in debts owed by C&L Lockers. In Petitioner's Exhibit 33, and in trial testimony Mrs. Hunt introduced and described a "C&L Locker Company Balance Sheet," showing total assets of

$21,326.73, total liabilities of $8,580.13, as well as an actual bank account cash balance of $9,136.07, as of September 2011 (RP 12/3/2012, pages 67, line 8-page 69 line 6). Mrs. Hunt additionally testified that these records were kept and produced by Mr. Hunt. Mrs. Hunt testified as to the January through September profit and loss report of C & L Lockers which showed a net income of $14, 189.40 (RP 12/3/2012, page 68, line 25). According to Mrs. Hunt's testimony, C & L's assets were greater than debts and C& L only had a debt of $8,500 as of September 2011, the date of separation. Mr. Hunt never furnished any testimony or evidence to directly contradict this testimony by Mrs. Hunt.

Mr. Hunt thus furnished several wildly variant calculations of possible community liability related to C&L Lockers. Mr. Hunt not only furnished bare and unsubstantiated numbers in his attempt to show the debt at trial by testifying as to Respondent's Exhibit 16, which were answers to interrogatories drafted by Mr. Hunt, but when Mr. Hunt finally and in an untimely manner sought some basic substantiation in the form of statements from suppliers who were allegedly owed money, the documents he provided in his Motion for Reconsideration contradicted his earlier testimony. Mr. Hunt never presented any evidence to counter Mrs. Hunt's Exhibit 33 and trial testimony on the assets, liabilities and cash on hand in C&L Lockers and Mrs. Hunt's evidence indicates that there might be little or no community liability related to C&L Lockers.

Furthermore, had Mr. Hunt in a timely manner provided documentation of debts or liabilities owed by C&L Lockers, Mrs. Hunt would then have had opportunity to establish whether these balances represented actual liabilities for which the community could be liable, or whether they represented the usual course of business operations in income and expenses at C&L Lockers. Since Mr. Hunt never properly or timely gave documentation or explanation for the alleged liabilities related to C&L Lockers, Mrs. Hunt was never able to respond to the alleged community liability by any further investigation of the business circumstances. The court properly gave no weight or credibility to the paucity of Mr. Hunt's evidence on this issue.

ISSUE NO. 4

THE COURT'S FAILURE TO ALLOCATE THE ALLEGED COMMUNITY INDEBTEDNESS OF $158,972.37 DID NOT AFFECT THE JUST AND EQUITABLE DISPOSITION OF PROPERTY AND LIABILITIES OF THE COMMUNITY.

The trial court properly found that there was no evidence or weak evidence regarding any community debt owed to Walt Miller and any debt alleged to have been owed by C & L Lockers. Therefore, the division of property and liabilities made by the trial court was just and equitable. According to Washington case law, where the trial court has weighed the evidence, the Appeals Court will not substitute its judgment for the trial court's, weigh the evidence, or adjudge witness credibility. Greene v. Greene, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). Supra at 726. The

trial court in this case overall found the wife's evidence more credible than the husband's. At the hearing on the Motion for Reconsideration the judge stated,

> ....I had indicated in the very short decision [Memorandum Decision filed January 31, 2013] that I made there, that this was a case where I struggled with some of the evidence. And quite frankly, it was more the husband's evidence than the wife's evidence. She supported her position very well with back-up support. ....this was a case where there was a lot that looked—sheep deaths, [typo in transcript, should be sheep debts] which I had trouble finding credibility to the extent of those [debts], property being destroyed, a trailer house burning, things of that nature....(RP 3/15/2013, page 25 line 25 through page 26, line 13).

In addition, at the trial the judge mentioned that "credibility is going to be a big issue here..." (RP, 12/3/2012 , page 250, line 12- through page 251, line 3). In this discussion of credibility the judge was referring to Mr. Hunt asking for a deviation in child support after he had bought a $32,000 pickup truck after he already had a pickup truck that was paid for.

Also, at the hearing on the Motion for Reconsideration, Mr. Hunt's attorney tried to bring up the specific Walt Miller debts after the judge had already made a decision that he was not going to consider new evidence. Mr. Neil argued that the court ignored a $143,000 debt and he asked the court to consider the debts owing for the sheep to Walt Miller that Mr. Neil stated where documented on the balance sheets with Zion Bank. (RP 3/15/2013, page 29, line 10-line 25). The judge replied, "And I appreciate the argument and I'm just not convinced that the evidence is credible.

Yeah, a substantial debt like that—that would have thought that—then there's a contract. We would have had the contract in evidence at the time and we didn't." (RP, 3/15/2013, page 30, line 9-14).

The trial court in this case made a just and equitable division of assets and debt. Based on the evidence presented at trial, the court weighed the evidence and made an equal division of property and debt. The trial court properly refused to consider Mr. Hunt's new evidence he tried to submit at the hearing on his Motion to Reopen, Reconsider and Clarify. It was not only new evidence that could have been produced at trial, but it was also evidence that conflicted with the evidence that Mr. Hunt presented at trial.

CONCLUSION

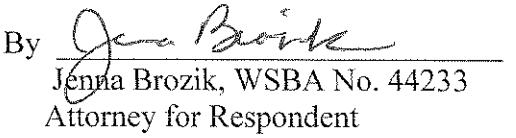
The trial court in this matter did not abuse its discretion in making evidentiary findings, conclusions and judgments in relation to the alleged community liabilities at issue in this appeal regarding two alleged debts to Walt Miller and alleged debts related to C&L Lockers. There is ample evidence in the trial court evidentiary record to show that for all these disputed debts the court did not have substantial or unchallenged evidence of the existence or amount of these debts. The trial court also properly refused to consider new evidence in Mr. Hunt's Motion to Reopen, Reconsider, and Clarify. The new evidence brought forth by Mr. Hunt was evidence that could have reasonably been produced at trial. The trial

court's judgment should be affirmed and Mr. Hunt's appeal seeking a reversal and remand should be denied.

Pursuant to RAP 14.1, 14.2, 14.3, 18.1 and 18.9, Mrs. Hunt requests an award of attorneys' fees. Mrs. Hunt has incurred substantial attorneys' fees and costs in responding to Mr. Hunt's appeal. Mr. Hunt brings forth a possible frivolous appeal due to his lack of evidence and lack of any basis in law in bringing forth this action.

Respectfully submitted this 1st day of October

PRINZ & BROZIK, PLLC

By 
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Attorney for Respondent

CERTIFICATE OF MAILING

I certify that on this 1st day of October that I caused a full, true, and correct copy of this Respondent's Brief to be mailed to Attorney for Appellant, Howard M. Neill of Aiken, Schauble, Patrick, Neill & Schauble at 165 NE Kamiaken, Suite 210, P.O. Box 307, Pullman, WA 99163, by first class United States Mail, with postage fully prepaid.

Jenna Brozik