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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 315975

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

IN RE THE MARRIAGE OF:

DEBRA M. ALDRIDGE

Respondent,

and

WILLARD D. ALDRIDGE, JR.

Appellant.

Chelan County No. 09-3-00572-7

APPELLANT'S REPLY BRIEF

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

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT IN REPLY	1
	A. The trial court erred when it characterized the Poolside and Satterlee properties as community property.	
	B. The trial court erred when it awarded attorney's fees at trial and when it awarded anticipatory attorney's fees post-dissolution.	
	C. The trial court abused its discretion when it distributed the property.	
	D. The clear partiality of Judge Allan requires disqualification on remand in order to satisfy the appearance of impartiality.	
III.	CONCLUSION	23

TABLE OF AUTHORITIES

State Cases

George v. Helliard, 62 Wash.App. 378, 814 P.2d 238 (1991).....6
In re Ayyad, 110 Wn.App. 462, 38 P.3d 1033 (2002).....9, 10
In re Borghi, 167 Wn.2d 480, 219 P.3d 932 (2009).....4-6
In re Estes, 84 Wn.App. 536, 929 P.2d 500 (1997).....10
In re Knight, 75 Wn.App. 721, 880 P.2d 71 (1994).....10
In re Rockwell, 141 Wn.App. 235 (2007).....15
In re Sanborn, 55 Wn.App. 124, 777 P.2d 4 (1989).....10-11
In re Williams, 84 Wn.App. 263, 927 P.2d 679 (1996).....12
In re Skarbek, 100 Wn.App. 444, 997 P.2d 447 (2000).....2, 4, 7
Saviano v. Westport Amusements, Inc., 144 Wn.App. 72, 180 P.3d 874 (2008).....1, 8, 13, 15, 18
State v. Kaiser, 161 Wn.App. 705, 254 P.3d 850 (2011).....2, 7
State v. Mills, 80 Wn.App. 231, 907 P.2d 316 (1995).....1

STATUTES

RCW 26.09.140.....9

RULES

RAP 10.3.....1

OTHER

Harry M. Cross, *The Community Property Law in Washington (Revised 1985)*, 61 WALR 13, 40 (1986).....5

I. INTRODUCTION

The Respondent, Debra Aldridge, filed a brief that is organized very differently from the guidelines in RAP 10.3 and from the Appellant's Opening Brief. It also includes a great deal of information that is not relevant to the issues on appeal. This creates some difficulty in organizing a reply. The reply will be arranged by gathering the arguments made in the Respondent's Brief by topic and replying to them in the order they were presented in the Appellant's Opening Brief.

II. ARGUMENT IN REPLY

A. **The trial court erred as a matter of law when it concluded that the Poolside and Satterlee properties were entirely community property.**

Aside from general comments contained in the "Legal Authorities" section (addressing questions such as "What is community property?" and "What is separate property?"), Debra provides no specific authority in support of any of her arguments on this issue. This Court need not address arguments that a party does not discuss meaningfully with citation to authority. *Saviano v. Westport Amusements, Inc.*, 144 Wn.App. 72, 84, 180 P.3d 874 (2008); citing RAP 10.3(a)(6); *State v. Mills*, 80 Wn.App. 231, 234, 907 P.2d 316 (1995).

POOLSIDE: The arguments related to the Poolside Apartments are located on pages 3, 6, 8, 34-36, and 42-43.

DEBRA: *“The Court had sufficient evidence that the Poolside Apartments, acquired by the parties via a Deed in both of their names in May of 2002 was a community asset; an abuse of discretion with respect to this finding did not occur.”* (Respondent’s Brief at 3.)

REPLY: On appeal, Will claims a misapplication of the law in the trial court’s conclusions, not an insufficiency of evidence to support its findings. *In re Skarbek*, 100 Wn.App. 444, 447, 997 P.2d 447 (2000)(“The trial court's classification of property as separate or community is a question of law.”) Further, because error is assigned to a conclusion of law, the standard of review on appeal is *de novo* not abuse of discretion. *State v. Kaiser*, 161 Wn.App. 705, 724, 254 P.3d 850 (2011)(“Questions of law are reviewed *de novo*.”)

* * *

DEBRA: *Willard Aldridge failed to provide any additional information with regard to the characterization or distribution of the Poolside Apartments. The Court did not commit an error and did not abuse its discretion in continuing to characterize the Poolside Apartments as community property and distributing the asset to Debra Aldridge.* (Respondent’s Brief at 6.)

REPLY: Debra argues that Will was required to provide additional information on reconsideration but does not provide any authority in support of this assertion. This is not accurate; the trial court is always entitled to correct a misapplication of the law on reconsideration.

* * *

DEBRA: *The Court did not determine that the Poolside Apartments had been purchased with separate funds, but noted that a “contribution” had been made by Mr. Aldridge to the total funds necessary to initially purchase the Poolside Apartments from a separate property source. At the time of the acquisition the parties did not use just the \$31,000 obtained from the sale of separate property of the husband. The funds to purchase were obtained with community credit and any funds contributed by Mr. Aldridge were co-mingled.* (Respondent’s Brief at 8.)

REPLY: The exact words used by the trial court were: “The parties put approximately \$32,000 cash towards the purchase price. The source of the cash was the sale of a duplex owned by the respondent as his separate property.” (CP 284.)

The trial court made no finding that the \$32,000 had been commingled, nor would the record support such a finding. The trial court easily and clearly identified the amount and source of the cash as being distinct from other funding sources.

* * *

DEBRA: *“There is a significant difference between Mr. Aldridge’s use of funds derived from a separate source to assist the community in obtaining a piece of community property than characterizing the 2002 transaction 10 years later as a separate property event.”* (Respondent’s Brief at 34.)

REPLY: It is difficult to form a reply to this argument as Debra does not go on to explain the significant difference nor does she provide any authority to support this argument.

* * *

DEBRA: *“Mr. Aldridge failed to submit evidence to overcome the presumption that the Poolside Apartment was community property.”* (Respondent’s Brief at 35.)

REPLY: There is, in fact, a rebuttable presumption that property acquired during marriage is community property, and that the party asserting otherwise has the burden of proving that property was acquired with separate funds. *In re Skarbek*, 100 Wn.App. 444, 449, 997 P.2d 447 (2000). In this case, Mr. Aldridge successfully proved that the \$32,000 in cash that was used as a down payment to acquire the property was separate property, thereby rebutting the presumption that the asset was entirely community in character. (CP 284.)

* * *

DEBRA: *“The Borghi case was not related to the acquisition of property during marriage but rather the legal effect of a deed which named husband and wife as co-owners of property acquired by the wife prior to the marriage. The case addresses the issue of whether or not putting the title in both names should be considered a “gift” to community or if more will be necessary to transmute the wife’s separate real property to community property.”* (Respondent’s Brief at 35.)

REPLY: *In re Borghi*, 167 Wn.2d 680, 419 P.2d 1006 (1966) addresses how a court should make the determination of whether a spouse intended to make a gift of separate property to the community. While Ms. Aldridge makes a distinction between the facts of *Borghi* and the facts of this case, she does not explain the nature of the distinction or why it matters, nor does she provide any law or authority to support her conclusion that the legal

principles stated in *Borghi* do not apply to the acquisition of property during marriage.

* * *

DEBRA: *“The \$32,000 contributed by Mr. Aldridge played a limited role in the acquisition of the asset.”* (Respondent’s Brief at 35.)

REPLY: No authority or citation to the record is provided to support this conclusion. The \$32,000 contributed by Will was the down payment that enabled the purchase of the property in the first place; therefore, the role of those funds was not limited but crucial. As stated in the opening brief, “[w]here the buyer acquires legal title at the outset in exchange for a cash payment and an obligation to pay the remainder of the purchase price, the fractional share of the ownership represented by the cash payment will be owned as the cash was owned.” Harry M. Cross, *The Community Property Law in Washington (Revised 1985)*, 61 WALR 13, 40 (1986).

* * *

DEBRA: *“The property was treated by both parties as community property and Mr. Aldridge only sought to establish a “separate” property claim when the marriage ended. His intent at the time the property was purchased was evidenced by his actions which did not include just the names on the title to the property. The simultaneous purchase of the property with community credit and the subsequent loans that were also based on community credit support the Court’s conclusion that the Poolside Apartment was community property. The “subsequent” events are further evidence of the intent of the parties to acquire the Poolside Apartments as community property.”* (Respondent’s Brief at 36.)

REPLY: Once again, Debra appears to be arguing whether there was substantial evidence to determine that Will's property was transmuted into separate property. It was Debra's burden to prove transmutation by clear and convincing evidence, and no such finding was ever made by the trial court.

Once property is determined to be separate, *it remains separate* unless clear and convincing evidence is presented that a party intended to transmute the property from separate to community property. (*Borgh* at 484, *emphasis added*.) The trial court made no finding that Will intended to transmute the property, which is the equivalent of a finding that he did *not* intend to transmute the property. *George v. Helli*, 62 Wash.App. 378, 384, 814 P.2d 238 (1991)(“The absence of a finding in favor of the party with the burden of proof as to a disputed issue is the equivalent of a finding against that party on that issue.”) Therefore, since Debra did not present clear and convincing evidence that Will intended to transmute the property, at least some portion of the Poolside property remains separate, and this matter must be remanded for proper characterization and distribution.

SATTERLEE: Debra's arguments related to the Satterlee residence are made on pages 3, 8, 36, 37, and 43.

DEBRA: *“The Court's determination that the parties' residence on Satterlee Road in Anacortes was a community asset was not an abuse of discretion. Sufficient evidence was presented at the time of trial indicating that the parties used joint funds and borrowed jointly to acquire the Satterlee road property,*

which was acquired by a Deed in both parties' names in November of 2006 to support the conclusion the property was community nature." (Respondent's Brief at 3.)

REPLY: Again, on appeal, Will claims a misapplication of the law in the trial court's conclusions, not an insufficiency of evidence to support its findings. *In re Skarbek*, 100 Wn.App. 444, 447, 997 P.2d 447 (2000)("The trial court's classification of property as separate or community is a question of law.") Further, as before, because error is assigned to a conclusion of law, the standard of review on appeal is *de novo* not abuse of discretion. *Kaiser* at 724.

* * *

DEBRA: *The parties' Satterlee Road home had been acquired with the use of funds obtained from the sale of the parties' jointly owned Dogwood home and jointly borrowed funds. It is inaccurate to assert that the Court determined that the property had been acquired with separate funds, as that is not a finding of the Court."* (Respondent's Brief at 8.)

REPLY: The court did in fact find that the Satterlee property had been purchased in part with separate funds: "In approximately 2006, the parties sold the Dogwood home and purchased the Satterlee property. In addition to using proceeds from the Dogwood sale, the parties obtained a bridge loan from Mr. Fortun and respondent also contributed funds from the sale of the "408 Commercial building" in Anacortes." (CP 285.) The trial court also acknowledged that the 408 Commercial building was Will's separate property. (CP 286.)

* * *

DEBRA: *“All funds that were borrowed were done so jointly and any separate funds invested were done so with the intent to make a gift to the community and were so commingled by the process as to not be traceable by Mr. Aldridge.”* (Respondent’s Brief at 36.)

REPLY: The trial court made no findings or conclusions with respect to Will’s intent to make a gift to the community or with respect to commingling. The trial court acknowledged that part of the purchase price of the Satterlee home was made up of Will’s separate funds but failed to determine the amount. Evidence was presented at trial that the proceeds from the Commercial property were used to build the home on Satterlee road and amounted to approximately \$250,000-\$275,000. (CP 285; RP 490, 645, 674.) This matter must be remanded for proper characterization and distribution.

B. The trial court erred when it awarded attorney’s fees at trial and when it awarded anticipatory attorney’s fees post-dissolution.

Debra provides two sentences of legal authority related to attorney’s fees in her general “Legal Authorities” section (Respondent’s Brief at 33); otherwise, she does not support any of her argument with law. This Court need not address arguments that a party does not discuss meaningfully with citation to authority. *Saviano* at 84.

DEBRA: *“[T]he trial court did not err in awarding \$5,000.00 in attorney’s fees to Debra Aldridge. After consideration of the financial circumstances of the parties and the property distribution, the Court did not abuse its discretion in making*

an award of fees. It is not necessary for the Court to determine that intransigence occurred in order to justify an award of attorney's fees." (Respondent's Brief at 6.)

REPLY: Debra is correct that the Court need not determine that intransigence occurred in order to justify an award of attorney's fees. However, if an award of fees is not based on intransigence, the trial court is required to balance the requesting party's need for a fee award against the other party's ability to pay; then, if it concludes an award is appropriate, it must state on the record the method it used to calculate the award. *In re Marriage of Ayyad*, 110 Wn.App. 462, 473, 38 P.3d 1033 (2002). The trial court did not do this in any instance.

* * *

DEBRA: *"The Court did not abuse its discretion when it made a determination that Mr. Aldridge had the financial ability to assist Ms. Aldridge with fees that she would incur defending Mr. Aldridge's appeal of the orders of the court. The Court had statutory authority to award attorney fees to permit the former wife to defend the appeal filed by the former husband and the financial circumstances that were known to the Court at the time of the entry of the order justified the award of said fees; an abuse of discretion did not occur."* (Respondent's Brief at 7-8.)

REPLY: Debra does not state what statutory authority exists that allows the *trial court* to award anticipatory fees *on appeal*. In this case, the trial court awarded fees on the basis of RCW 26.09.140, which permits no such thing. RCW 26.09.140 provides that one party may be ordered to pay "reasonable attorney's fees or other professional fees in connection

therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.” The clear language of the statute states that a reasonable amount can be awarded for legal services *rendered* and costs *incurred* – not legal services to be rendered and costs to be incurred. It is well-settled that the trial court must review the fees charged and the time expended to determine whether the fees are reasonable. *In re Estes*, 84 Wn.App. 536, 929 P.2d 500 (1997); *In re Knight*, 75 Wn.App. 721, 880 P.2d 71 (1994); *In re Sanborn*, 55 Wn.App. 124, 130, 777 P.2d 4 (1989). The court cannot do this if no fees have been charged and no time yet expended.

* * *

DEBRA: *“The Court had before it the fee declaration of Ms. Schmidt and the amended fee declaration of Ms. Schmidt indicating the amount of fees that had been incurred by Ms. Aldridge. It would be unnecessary for the Court to actually explain how it had calculated the fee awards as it was well aware of the fact that the \$5,000.00 award was a small fraction of the fees and expenses paid by Ms. Aldridge.”* (Respondent’s Brief at 8.)

REPLY: This is incorrect: “If the court makes an award, it must state on the record the method it used to calculate the award.” *It re Marriage of Ayyad*, 110 Wn.App. 462, 473, 38 P.3d 1033 (2002). An award can be vacated even when it is reasonable if there is no indication in the record of

how the court arrived at the figure. *In re Sanborn*, 55 Wn.App. 124, 130, 777 P.2d 4 (1989).

* * *

DEBRA: *“The Court did not err when it awarded attorney’s fees on appeal to Debra Aldridge so that she would have a means by which to fund a defense of the appeal filed by Mr. Aldridge. The Court was aware of the parties’ changed financial circumstances as presented at the time of the June 2013 order. Mr. Aldridge’s financial circumstances had been improved significantly by the death of his mother. He had available to him a substantial amount of money that he had inherited as well as the forgiveness of a substantial debt related to his operation of the commercial side of the Deaconess. Ms. Aldridge had spent her cash to do repairs at the Poolside and Satterlee home. Mr. Aldridge did not submit an updated financial declaration; Ms. Aldridge did.”* (Respondent’s Brief at 9.)

REPLY: There is no substantial evidence in the record to support a finding that Debra has a financial need for an award of attorney’s fees. The test for attorney’s fees requires the court to balance the requesting party’s need for a fee award against the other party’s ability to pay. Here, Debra argues that because she believes Mr. Aldridge had the ability to pay, the analysis is concluded. This is not so. Debra had just been awarded over \$800,000 in property mere months prior (\$30,000 of which was liquid), and she testified to making several thousand dollars a month from the rents of that property such that she was able to put away quite a bit of savings while paying her attorneys fees. The suggestion that she is unable to pay her legal fees (when in fact she has already successfully done so) is disingenuous.

She would prefer not to pay them, and understandably so, but nevertheless that is not the test.

C. The trial court abused its discretion when it distributed property.

SATTERLEE RESIDENCE: In addition to ignoring Will's contribution of separate funds for the acquisition of the Satterlee property, the trial court similarly ignored his investment of time and effort. The trial court made much of Debra's "involvement" with Will's property development projects (despite the fact that she didn't contribute any money to any project) in order to award Poolside in its entirety to Debra; then the trial court subsequently disregards the substantial evidence in the record that Will designed the Satterlee property and managed its construction himself – he even built a substantial portion of the home with his own hands. Washington courts recognize that consideration of each party's responsibility for creating or dissipating assets is relevant to the just and equitable distribution of property." *In re Williams*, 84 Wn.App. 263, 270, 9217 P.2d 679 (1996). In this case, the trial court ignored Will's financial contribution to this asset; it ignored his investment of time, effort, and expertise; it refused to consider the sentimental value Will had for this project; and it refused to acknowledge the fact that he lived there and was being abruptly evicted from his home which resulted in a significant one-sided burden to him without any adverse affect on Debra who was not being asked to vacate community property.

Debra does not dispute any of this in her brief.

RETIREMENT: Debra's arguments with respect to this issue are located at pages 4, 37, and 44. She cites no authority in any of her arguments. This Court need not address arguments that a party does not discuss meaningfully with citation to authority. *Saviano* at 84.

DEBRA: *The Court did not err in awarding 11% of Willard Aldridge's Civil Service Retirement to Debra Aldridge as representative of Debra Aldridge's interest in the Civil Service Retirement for those years of service that occurred while the parties were in an equity partnership and during marriage; an abuse of discretion did not occur.* (Respondent's Brief at 4.)

REPLY: It is not Will's contention that the trial court erred by awarding a percentage of Will's retirement to Debra as representative of her interest in his retirement during the years of service that occurred during their marriage. It is Will's contention that doing so without consideration of the fact that Debra had contributed to Social Security during that period of time, and that Will's contribution to the Civil Service Retirement was in lieu of contribution to Social Security during the same period of time. This resulted in Debra being awarded the entirety of her contribution to Social Security as well as a representative percentage of what was functionally Will's Social Security as well.

* * *

DEBRA: *The court was not provided with a present value calculation of the husbands' Civil Service retirement benefit and he did not offer evidence of his assertion that the court should treat a portion of the Civil Service retirement benefit as Social*

Security. (Mr. Aldridge did not tell the court he would not receive Social Security benefits. RP 630. He noted that he had selected a surviving spouse option when he applied for benefits which he had been receiving since 2004. RP 630.) It would have been pure speculation on the Court's part to undertake to do the calculations that Mr. Aldridge now suggests without expert testimony. The court was presented with the years of service and years of committed intimate partnership and marriage and divided the retirement benefit accordingly. Mr. Aldridge can't fault the court for his failure to present evidence. (Respondent's Brief at 37.)

REPLY: The difficulty here was not that Will had not provided the trial court with a present value calculation of his Civil Service retirement benefit. The problem was that he had provided his Civil Service information and his Social Security information, and Debra refused to provide her Social Security information. Will complained that Debra had refused to provide information about federal retirement benefits on reconsideration. (CP 322.)

Further, contrary to Debra's argument, Will did testify to the Court that that Debra "contributed into a Social Security retirement fund which, as a federal employee, I was not contributing into Social Security." (RP 629.) Therefore it is inaccurate to suggest that the matter was not properly before the trial court.

* * *

DEBRA: *When the Court awarded a percentage of the husband's Civil Service benefit to the wife based on the length of time that the parties had either been in a committed relationship or married to one another while the husband worked and contributed to the retirement plan. No evidence was presented at the time of trial as to the present value of the right to receive the Civil Service benefit. Mr. Aldridge failed*

to produce any evidence other than some vague testimony with respect to his assertion that some portion of his Civil Service benefit contains a component of Social Security benefits. He testified that he would receive Social Security. The Court did not err or abuse its discretion awarding 11% of the Civil Service retirement benefit to the wife which amounts to be about \$310 per month. (Respondent's Brief at 44.)

REPLY: During the period of time when the parties were married, Mr. Aldridge contributed to his federal pension, a portion of which was awarded to Ms. Aldridge. During the period of time the parties were married, Ms. Aldridge contributed to Social Security, no portion of which could properly be awarded to Mr. Aldridge. This is fundamentally unfair, particularly in light of the parties' respective ages. The trial court does not properly evaluate the economic circumstances of the spouses unless it considers the amount of social security benefits received. *In re Rockwell*, 141 Wn.App 235, 243-44 (2007).

CHINA CABINET: Debra's arguments with respect to the china cabinet are located at pages 5, 7, and 47. None of them provide citation to authority or to the record. This Court need not address arguments that a party does not discuss meaningfully with citation to authority. *Saviano* at 84.

DEBRA: *The Court did not err when it determined that a china cabinet, which had belonged to Willard Aldridge's former mother-in-law would be awarded to Ms. Aldridge. The evidence which was before the Court indicated the china cabinet had been purchased for a nominal fee and given to*

Debra Aldridge by her husband; an abuse of discretion did not occur.” (Respondent’s Brief at 5.)

REPLY: At trial, Will requested that he be awarded the china cabinet because it was an heirloom from his first wife’s grandmother and had sentimental value to his children. (RP 610.) He made another request for the china cabinet in his motion for reconsideration. (CP 323.)

In her brief on appeal, Debra claims that there was evidence before the court that the china cabinet had been purchased for a nominal fee and given to her, but she does not cite to the record to support this contention.

The trial court’s repeated and inexplicable refusal to award Will the one piece of personal property he was particularly concerned about (and in which he had an undisputed interest as a family heirloom for his children) demonstrates the trial court’s partiality in this matter. This decision is puzzling as Debra made no special request for the china cabinet at trial.

Debra’s arguments located at page 7 and page 47 are substantively identical to that presented above and therefore need not be repeated here.

ACCOUNTING FOR COMMUNITY FUNDS DURING SEPARATION: Debra’s arguments with respect to this issue are located at pages 1-2, 4-6, 14-15, and 45.

DEBRA: *Mr. Aldridge pursued on many occasions his theory that the wife’s stated personal expenses and the amount of funds that she reported as her net income from the Poolside Apartments resulted in what he considered to be a “slush fund.” His thinking in this regard is flawed and was rejected by the Court. Ms. Aldridge had to pay large sums for repairs,*

attorney fees, and costs while the court case was pending.
(Respondent's Brief at 45.)

REPLY: Despite her dismissive comments, Debra does not, at any point, dispute that she was awarded the entirety of the community funds (approximately \$168,022.68 in Poolside rents) during the *three years* of litigation in this matter; nor does she dispute that Will was forced to pay all of the community debts during the same period, thereby conferring a double windfall to Debra. This can be clearly determined from the accounting worksheets that were submitted at trial. These worksheets show that Debra had an average income of \$3,896.78/month in 2010, \$3,740.79/month in 2011, and \$4,364.05/month in 2012 from the profit of Poolside. (Exhibits 5A1-5A9, 5B1-5B12, and 5C1-5C5.)

* * *

DEBRA: *After consideration of the financial resources and income streams available to both parties while the court case was pending, it was not an abuse of discretion to determine that Mr. Aldridge be responsible for the obligations relating to the family home which he had chosen to occupy.*
(Respondent's Brief at 1-2.)

REPLY: This is not accurate. Both parties lived at the Satterlee home until Debra abruptly moved out and into the Poolside apartment building owned by the parties. Will had no other alternative for living arrangements. It was not his decision to live in the property that had a mortgage, rather he was left there by Debra's unilateral decision to take up residence at Poolside (where the property mortgage was paid out of the rental income). The

suggestion that Will ought to have been made solely responsible for the Satterlee mortgage for three years because to do so was the natural consequence of decisions he had voluntarily made himself is an unreasonable conclusion that ignores the facts.

D. The clear partiality of Judge Allan requires disqualification on remand in order to satisfy the appearance of impartiality.

In her limited arguments related to this issue (which are provided below in their entirety), Debra makes no citation to authority and no citation to the record. This Court need not address arguments that a party does not discuss meaningfully with citation to authority. *Saviano* at 84.

DEBRA: *The Court did not demonstrate partiality sufficient to require remand to a different judge. The facts and circumstances which have been described in the Appellant's Opening Brief misstate and mischaracterize what actually occurred. Judge Allan did not demonstrate any partiality towards either party in the case. If a remand is to occur with respect to any aspect of the case, as the trial judge who is familiar with all facts and circumstances of the case, she should be the judge to revisit any issue on remand.* (Respondent's Brief pg. 9.)

REPLY: Despite her claim that the facts and circumstances described in the Appellant's Opening Brief are not accurate with respect to the allegation that Judge Allan demonstrated partiality, Debra makes no attempt to correct them. Nor does she address the substance of the argument.

* * *

DEBRA: *Judge Lesley A. Allan conducted all pre-trial, trial, and post-trial matters in an impartial and fair manner and made decisions that were based on the record before her. She did not fail or refuse to consider any documents that were*

submitted by Mr. Aldridge. During the course of the trial, objections were made by both parties and the Court reviewed and considered those objections and correctly ruled on the objections. The short colloquy that was set forth in the brief of the appellant had to do with an objection to having Mr. Aldridge read an exhibit which spoke for itself. The fact that the trial court ruled favorably on a standard objection raised by the wife does not demonstrate partiality. (Respondent's Brief at 47-48.)

REPLY: Debra's argument is misleading; the incident to which she refers is not the only evidence that was set forth in the brief. In fact, it is only one item in a list of six examples of ways in which the trial court repeatedly demonstrated its partiality toward Debra and against Will. Debra fails to respond to most of them.

1) Judge Allan refused to consider evidence submitted for its review related to the motion for temporary orders. (CP 36.) Without any basis for the conclusion that this Court may disregard an entry of the trial court in the record on appeal, Debra claims that this information is simply a mistake in the court's minutes.

2) Will argues that the trial court relied on Debra's counsel's argument that Will had not filed a declaration detailing how the money had been spent (CP 62), when in fact he had (CP 26-31, 55).

3) Judge Allan made it apparent that she believed that Will was engaging in a "scam" or a "shell game" because he took part in a Section 42 Tax Credit Partnership. (RP 696-97.)

Mr. Volyn: “Your Honor has just described a Section 42 partnership as a sham or a shell game, and I’m just trying to understand whether or not my client’s participation in a Section 42 tax partnership is somehow being characterized by the Court as improper or illegal? The Court’s calling it a sham and I’m trying to understand where that’s coming from and why that terminology would be used.”

The Court: Certainly, the Section 42 tax credit is apparently something that’s approved by the federal government, but throughout this trial, it’s been presented to the Court that Mr. Aldridge’s interest in the Deaconess Apartments is only point one percent. And then I think a question I asked when we were last in court is, why would anybody in his position even bother to get into this sort of thing if all he’s getting out of it is \$750 16 or more years down the road. And, of course, I think he testified, in part, well, he got to do some – got some development fees so that was income to him, but it wasn’t making sense to the Court that he would go from point one percent to 65 percent, and there was no explanation about why that would happen. And so my reference to a shall or sham is just the sense that his ultimate interest in this is really 65 percent, even though what we’ve been hearing is this point one percent all the way along, and that’s how all of these Section 42 things are set up with the ultimate intention that in this, you know, place, the developer ultimately gets some reward at the end of the line, so –

Mr. Volyn: All right, Your Honor. Thank you. I don’t have any more questions for this witness.

Ms. Schmidt: I have nothing further.

The Court: All right. Mr. Aldridge, you may step down. And in case you weren’t listening, Mr. Volyn, I did apologize in advance for my choice of phrase there.

(RP 697-98.)

4) Will argues that the trial court repeatedly penalized him for not doing things he was not obligated to do. For example, Judge Allan ruled that

Will must vacate the home, stating that “the Respondent has been in the house for over 3 years and has made no effort to complete the repairs necessary for sale.” (CP 370, 374.) Will was under no obligation to make repairs; in fact, Judge Allan previously ruled: “If the respondent/husband makes unilateral decisions to do work on the Anacortes home where he is residing he will be responsible to pay for the work done...” (CP 39.)

Similarly, Judge Allan ruled that Will was responsible to pay anticipatory attorney’s fees: “Mr. Aldridge has the ability to provide the information to set forth his current income and resources and failed to do so.” (*Order on Petitioner’s Motion Regarding Post Dissolution Issues*, filed June 26, 2013.) Will was not obligated to supply information in any particular form pursuant to any procedural rule, and further, he did in fact provide a great deal of financial information. This is also inexplicably heavy-handed given that this particular hearing was had a mere five months after Will’s income and resources were examined at considerable length at trial (and with Will being retired, neither had changed significantly).

5) Throughout the trial, Judge Allan repeatedly assisted Debra’s attorney and hindered Will’s attorney. In addition to the colloquy provided in the opening brief, there is the following example of Judge Allan deferring to Debra’s attorney’s mischaracterization of testimony:

Ms. Schmidt: And, Mr. Aldridge do you have an opinion as to the value of the Gibraltar Road property that you purchased after separation?

Mr. Aldridge: I do not have. If I had gotten a subordination agreement from you that you promised me, I would approach going about refinancing it, but the bank won't refinance it, so I haven't bothered to get an appraisal on it.

Ms. Schmidt: Mr. Aldridge do you know whether or not your attorney prepared such a document and submitted it to Ms. Aldridge for her signature?

Mr. Aldridge: I don't know.

Ms. Schmidt: And after we were here in court, did you ask him to take those steps on your behalf?

Mr. Volyn: Objection, attorney-client privilege, what he communicated to his attorney and what his attorney communicated to him.

The Court: Sustained.

Ms. Schmidt: Mr. Aldridge, are you aware that any subordination agreement has ever been presented to Ms. Aldridge?

Mr. Aldridge: I don't know.

Ms. Schmidt: So your testimony that she has refused to sign, that comes from where?

Mr. Volyn: Objection, that mischaracterizes the testimony. He didn't say that she refused to sign it.

The Court: Actually, I think he did, so I'll allow him to answer that question.

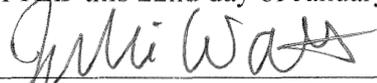
(RP 621-22.)

6) Finally, the consistency with which the trial court's orders adhered to the proposed orders submitted by Debra's attorney (even in the clear absence of supporting legal authority) results in a strong inference of partiality.

III. CONCLUSION

Debra makes very little substantive response to Will's arguments on appeal. The record shows that the trial court abused its discretion in the finding of facts for which there was no substantial evidence in the record, and it repeatedly erred in its conclusions as a matter of law. The trial court also demonstrated consistent partiality to Debra in its inequitable distribution of property and its unfair management of the case. Therefore, the Appellant respectfully requests this Court to remand the matter for proper characterization and distribution of property to a different trial judge.

RESPECTFULLY SUBMITTED this 22nd day of January, 2014,



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FILED

JAN 22 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By 

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

In re the Marriage of:)	
)	No. 315975
DEBRA M. ALDRIDGE)	
)	Certificate of Service
Respondent.)	
)	
and)	
)	
WILLARD D. ALDRIDGE, JR.)	
)	
Appellant.)	

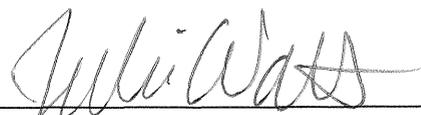
On January 22, 2014, a true and correct copy of the below-named document:

Appellant's Reply Brief

was emailed in digital format to cindy@kathleeneschmidt.com and mailed by First Class Mail, postage prepaid, to the following individuals at the addresses listed below:

Kathleen M. Schmidt
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DATE: January 22, 2014



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