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No. 65179-0-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

In re the Marriage of

LOIS MARGARET GELMAN  
Appellant

and

ERIC NEAL FASSLER  
Respondent

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

REPLY BRIEF OF APPELLANT

PATRICIA NOVOTNY  
Attorney for Appellant  
3418 NE 65th Street, Suite A  
Seattle, WA 98115  
(206) 525-0711

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COURT OF APPEALS  
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## I. STATEMENT OF ISSUES IN REPLY

1. There are no adequate findings to which this Court can defer and no record of an exercise of discretion which this Court can review.

2. The facts regarding the parties' economic circumstances, when all of them are considered, do not support the distribution ordered in this case.

3. Because the inheritance was easily traced, it was Gelman's separate property.

4. Gelman's practice had no distributable value under Washington law.

5. Likewise, Gelman's accounts receivable had been "used up" by the time of trial, spent on living expenses, and could not be distributed apart from the assets in which they now resided.

6. Failing to account for Gelman's hugely disproportionate contribution to the value of the marital residence from her separate funds pending dissolution, and for the benefit of the daughter, makes no sense.

## II. ARGUMENT IN REPLY

### A. WE CANNOT KNOW IF THE COURT PROPERLY EXERCISED ITS DISCRETION OR WHETHER IT DISPROPORTIONATELY FAVORED THE HUSBAND OUT OF SYMPATHY.

It is a tragic event to suffer cancer. Gelman does not dispute this nor that Fassler has indeed suffered. Yet Fassler spends considerable time reciting the specifics of his diagnosis and treatment. Br. Respondent, at 4-7. At the same time, Fassler utterly dismisses the suffering of clinical depression and its impact on life and work. Br. Respondent, at 1, 9. But there is no premium on compassion, and both parties here deserve compassion. Gelman's point is that the trial judge was required to evaluate the facts in this case as they relate to the relevant legal inquiries. Not only did the court fail to state on the record any of the reasons for its distribution, the distribution itself, in particulars and in proportion, is unsupported by the facts and/or at odds with the law.

#### 1) Gelman faces considerable economic uncertainty going forward.

Gelman made the majority contribution (65%) to the family economy during the marriage. RP 40. She did so despite taking three leaves to give birth to the parties' children. RP 15-16. Such contributions are entitled to consideration in making an equitable

distribution. *In re Marriage of Washburn*, 101 Wn.2d 168, 183, 677 P.2d 152 (1984). There is nothing here to suggestion the court accounted for Gelman's contribution in its analysis.

Fassler handled all the money and paid all the bills, a worthy contribution as well. RP 20-21. Indeed, he is enjoying economic security today because he made the payments, from community funds, for his disability insurance. Ex. 125 (his policy purchased 1992).<sup>1</sup> He does not dispute that he failed to make payment for Gelman's disability insurance. Whether this failure occurred two or ten years ago is beside the point. Contra Br. Respondent, at 9. Fassler managed their finances and there is nothing to suggest Gelman knew she lacked disability insurance until after separation, when she no longer had an income-earning spouse to rely upon.

Gelman cannot get a new policy, due to her age and to insurers' distaste for depression as a risk factor. RP 47. Fassler speculates greatly about possible tragic turns in his future, a cancer recurrence and experimental cancer treatments. See, e.g., Br. Respondent, at 14. But misfortune can fall to anyone, and Gelman,

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<sup>1</sup> In his brief, as at trial, Fassler is coy about the lifetime duration of his disability benefit, claiming it is "uncertain" whether his policy will continue to pay after age 65. Br. Respondent, at 14. The policy is quite clear that it does. Exhibit 125 ("You have a lifetime benefit rider added to your policy which provides a benefit for as long as you live.").

unlike Fassler, has no safety net. This is a straightforward matter of economic security. In this respect, his future is secure and hers is not. There is no indication the court considered any of this.

Yet, the recent loss of Gelman's successful solo practice underscores this point. Fassler would like to attribute this loss to "many circumstances" and claims it is "disingenuous" of Gelman to blame her depression. Br. Respondent, at 9. What's disingenuous about the truth? The orthopedic group with whom Gelman contracted asked her to take on a partner because of concerns for her mental health, amid rumors and drama attending the marital separation. RP 40-43; CP 223-224. The group also sent out proposals for anesthesia services to competitors. RP 43; CP 223-224. Though it is also true the group's parent corporation no longer would allow the use of nurse anesthetists (RP 40), that restriction would apply equally to Gelman's potential competitors. It was Gelman's depression that sent the group looking for a replacement. To deny this causal link, particularly as it makes so much simple sense, adds insult to injury.

2) Fassler's future prospects are not necessarily as grim as he portrays.

Fassler argues the trial court must decide cases without benefit of a crystal ball. Br. Respondent, at 14. Precisely Gelman's

point. The trial court must decide cases based on the facts known at trial, and reasonable inferences therefrom. All the facts.

Of course, we do not know what facts the trial court found, exactly, since there are inadequate findings. But certainly one relevant fact includes Fassler's medical condition. He claims "[h]e cannot now work as an obstetrician/gynecologist and knows no other type of medicine." Br. Respondent, at 1. This overstates the evidence at trial by a long shot, evidence which gives him an even chance of being able to work at this very moment.

According to his oncologist, Fassler has a 50/50 chance of dying within several years or *living cancer free*. RP 161; CP 24, 33. The oncologist believed the cancer, though aggressive, was confined to Fassler's bone. CP 23-24. A spot on his lung, after observation, was likely unrelated, according to his oncologist. *Id.*, see, also CP 307 (surgeon agreed). Both the oncologist and the surgeon believed the cancer had been surgically removed. CP 24, 27, 304. Indeed, the cancer was "staged" as not metastatic (i.e., Stage IIB). CP 289. Fassler was cancer-free at the time of trial. CP 25.

Indisputably, the effects of the cancer treatment were profound. But these complications are not permanent, though

Fassler makes it sound as if they are. Br. Respondent, at 5. He was at his worst at trial, having just finished his treatment. CP 25. But, as his surgeon confirmed, “he got through it.” CP 292. It was anticipated he would recover from the complications from chemotherapy, save for some hearing loss and, possibly, some kidney function. CP 27-28. The complications were not life-threatening. CP 30. He will not be permanently nauseous or permanently afflicted with “chemo brain.” CP 32. He would complete physical rehabilitation from his surgery within a year with a return of nearly all functionality. CP 301, 305-306. He would lose some muscle definition in his shoulder on flexing. CP 310-311, 313-314. The remarkable and wonderful fact is that advances in surgery spared Fassler’s arm. CP 294. It does not diminish the anguish he has suffered to acknowledge the good news as well as the bad.

As for Fassler’s ability to work, including to practice medicine, it was simply “too early to tell,” according to the oncologist. CP 29. His surgeon thought Fassler could look forward to “as good a result as anybody,” but it was “quite possible” Fassler would never be able to perform some of the “very physical” kinds of

surgery his practice can require. CP 301. The surgeon did not say Fassler could never work again.<sup>2</sup>

As an obstetrician/gynecologist, Fassler did a great many more things besides deliver babies.<sup>3</sup> The idea that slightly diminished strength and rotation in one arm would mean he could never work again is more than a little incredible. It does not take a crystal ball to know that Fassler could well be, at this very moment, practicing medicine somewhere, perhaps as a volunteer, travelling, recreating, and living a normal life. At best, all that was established at trial was that Fassler was, just after finishing chemotherapy, disabled from being able to work in his chosen subspecialty.<sup>4</sup> In any case, the court made no finding that Fassler could not ever again be gainfully employed, nor would the evidence support such a finding.

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<sup>2</sup> By his own admission, the surgeon's letter to the insurance adjuster was framed in stark terms to "head off at the pass" any resistance from the insurer in starting disability benefits and to limit any "back and forth" about assessing Fassler's ability return to work. CP 314, 321. The surgeon's testimony was more nuanced and equivocal on the subject of future occupation.

<sup>3</sup> For example, his former practice group describes the many services offered at the clinic. <http://www.wfhsmd.com/services>.

<sup>4</sup> Fassler's insurance covers him for his "own occupation." Exhibit 125, at 6-7. It appears he may still receive "residual disability" benefits while working in a different occupation, if he earns less than in his "own occupation." Id.

3) Comparing the economic circumstances of the parties.

We simply cannot know whether the court considered all of the relevant factors. Fassler acts as if that makes no difference, repeatedly pointing to Gelman's income as an answer to every argument she makes. Certainly, Gelman makes a good income, though not nearly as good as Fassler's arithmetic would have it. Br. Respondent, at 9.<sup>5</sup> Just as certainly, she makes less than she did before her marriage ended. And, certainly, she has only so many years left to work. At 57, Gelman is four years older than Fassler, meaning that if he remains cancer-free and returns to work, he would have as many (or more) earning years ahead of him as she does, assuming she is not sidelined by illness or injury. As discussed above, her lack of disability insurance places her in economic jeopardy.

Meanwhile, Fassler's contribution to the education of the parties' youngest child is capped at the University of Washington level (CP 69), though Molly, like her sisters, intends to go to a private school out of state (Pomona), at considerably greater

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<sup>5</sup> Gelman's monthly income is about \$18,600 after taxes, from which she then pays business expenses of \$3,600. RP 31-33; Exhibit 37. Her net income as it appears on the child support order is incorrect, as Gelman pointed out in her motion for reconsideration. CP 67, 95. The point is moot for child support purposes.

expense. RP 16-17, 20.<sup>6</sup> At the time of trial, her application process was complete and she was simply awaiting word on admission. There was no evidence she had even applied to the University of Washington.

Why Fassler insisted that Molly's education be supported at less than provided the other girls remains unclear. RP 195. Fassler receives nearly \$120,000 annually in tax-free income, as well as another \$26,400 in social security disability, for an annual net income of about \$140,000. CP 66, 138, 165. He calls this amount "stagnant" (Br. Respondent, at 14), but another word for it might be "secure." Certainly, most people would find a guaranteed income of nearly \$12,000 a month fairly comfortable, allowing for retirement savings and postsecondary educational support for a child.<sup>7</sup> Fassler did not appear in his financial declaration to be terribly constrained, spending freely on meals out, clubs, recreation, and travel. Supp. CP \_\_\_ (sub 81, 105). Moreover, he shares expenses with his new partner. Id.

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<sup>6</sup> Tuition, room and board at Pomona is approximately \$50,000, twice the costs at UW-Seattle. CP 20. See <http://admit.washington.edu/Paying/Freshman/Budget>

<sup>7</sup> Median income in the United States in 2009 was approximately \$50,000. <http://www.census.gov/prod/2010pubs/p60-238.pdf>

Fassler reminds us “there is a very real chance that his cancer will recur.” Br. Respondent, at 14. There is an equal chance he will survive his cancer. Gelman, too, faces an uncertain future, as do we all. She is older than Fassler, has no safety net for her income, suffers from depression, which has already caused a substantial professional setback and disqualified her from obtaining disability insurance, and she carries the lion’s share of the burden for educating their youngest daughter.

It is axiomatic that courts must decide cases based on evidence, not on sympathies or prejudices or assumptions or preferences. Here, that axiom appears to have been violated. Certainly, the court failed to explain how its distribution satisfies the requirements of Washington law.

**B. THE INHERITANCE WAS GELMAN’S SEPARATE PROPERTY.**

Contrary to Fassler’s claims, Gelman very much disagrees that her inheritance was commingled. Br. Respondent, at 21. The law also disagrees with Fassler, since merely “intermingling” funds does not mean they have been *commingled*. *In re Marriage of Skarbek*, 100 Wn. App. 444, 448, 997 P.2d 447 (2000). Rather, “only when money in a joint account is hopelessly commingled and cannot be separated is it rendered entirely community property.”

*Id.* By contrast, “[i]f the sources of the deposits can be traced and identified, the separate identity of the funds is preserved.” *Id.* This identity remains even if the separate property undergoes “changes and transitions.” *Id.*, at 448.

Here, Gelman’s inheritance remained in a separate account until the year of the parties’ separation. Its temporary residence in the couple’s joint account, accomplished by Fassler, not by Gelman, does not change the separate identity of the inheritance. The exact amount of the inheritance was easily determined to be \$157,054.18. RP 64. Because these funds are so clearly and easily traced, it is Fassler’s burden to demonstrate an intent to transfer them to the community, a burden he must carry by clear and convincing evidence, usually a writing evidencing the donative intent. *Skarbek*, 100 Wn. App. at 448.

This requirement has been recently underscored by our Supreme Court, with particular significance to this case. *In re Estate of Borghi*, 167 Wn.2d 480, 485, 219 P.3d 932 (2009). In *Borghi*, the fact that a spouse placed the other spouse’s name on title to real property was inadequate to establish an intent to change the character of the property. Likewise, here, all the evidence Fassler has to support his claim to community property

characterization is the fact that Gelman's inheritance was placed temporarily in a joint account. This transfer was not Gelman's idea, but was made necessary by a tax code requirement. See, *Borghi*, 167 Wn.2d at 489 (many "good business" reasons for spouses to create joint title without intending to create community property); RP 61-65, 104-105, 116, 213. Moreover, the timing is hard to ignore. Within months of the transfer from the IRA to the joint account, Gelman discovered Fassler had been for some time involved in an extramarital relationship and the marriage effectively ended.<sup>8</sup> It is a stretch, at best, to infer from these facts that Gelman intended to donate her inheritance to the marital community.

Nevertheless, Fassler argues that Gelman "never contests" that her inheritance was "either distributed to the children or commingled." Br. Respondent, at 23. Not only does Gelman vigorously contest this proposition, Fassler actually fails to prove it. In his brief he claims that some of Gelman's inheritance was spent on the children's private schooling and placed in education savings

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<sup>8</sup> Fassler admonishes that fault is not an issue in this proceeding (Br. Respondent, at 10 n.5), a proposition not in dispute. Nevertheless, the fact of Fassler's infidelity is made relevant both by the issue of intent as it relates to the inheritance and by the issue of Gelman's professional setbacks, caused by her post-separation depression.

accounts for their children. Br. Respondent, at 21-22. This both misstates and overstates the evidence. First, Fassler did not testify at all to expenditures from the joint account for private secondary schooling, but only to education savings accounts for college. RP 150-151.<sup>9</sup> Even then he could not say more than that he “believe[d] some of that money” was put into the children’s accounts. RP 150-151. When asked if he knew how much money, he said “No.” RP 151. When asked who would know, he said “I don’t think anybody.” RP 151. His recollection was similar, and similarly vague and speculative, as to what became of funds he claimed he inherited. CP 214 (thinks maybe four years earlier he inherited \$87,000, which he “commingled” and maybe put some of it toward the educational accounts).

This testimony hardly carries the burden on Fassler to prove a change in identity of the property. Rather, all he offers is a daisy chain of suppositions. (Perhaps money went from the joint account to the education accounts, in some unknown amount. Perhaps this occurred after Gelman’s inheritance was placed in the joint account, rather than before. Perhaps this occurred after Gelman’s

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<sup>9</sup> As the bank statements make clear, the private tuition payments were made automatically out of the parties’ checking account. Exhibit 136.

inheritance was placed in the joint account but prior to the actual date of separation.) Even if that chain of assumptions could withstand a slight breeze, it still falls because there is no evidence supporting that it was the inherited money spent on the educational accounts, rather than community money. Indeed, because this account indisputably contained community funds, those funds should be applied first for any community benefit under a rule often called “community out first.” Weber, 19 *Wash. Pract.* § 11.13, *Tracing and Commingling* (citing illustrative cases from other states). In short, *if* contributions from the joint account were made after Gelman’s inheritance was placed in the joint account, those contributions came from community, not separate, funds.

Gelman’s inheritance was intact in the year of separation. It was a known amount in a known place. Thus, this case is completely unlike the case Fassler cites. See Br. Respondent, at 21, citing *In re Marriage of Shui and Rose*, 132 Wn. App. 568, 125 P.3d 180 (2005). In *Shui*, the husband exercised both separate and community stock options, deposited all of the proceeds into four different investment accounts from which numerous other assets were purchased, such that it was impossible to trace what was what. *Id.* at 585. Because no such complexity afflicts the

asset at issue here, *Shui* is simply inapposite. Fassler fails to prove any change in the character of the inheritance. Intermingling, particularly for a short duration on the eve of marital separation, does not prove commingling. The court erred when it characterized this asset as belonging to the community, in violation of Washington law.

C. GOODWILL, BY ANY OTHER NAME, DOES NOT EXIST IN AN ANESTHESIOLOGY PRACTICE.

Fassler seeks to defend the trial court's valuation of "goodwill" to Gelman's anesthesiology practice on the basis that an expert proposed it. Br. Respondent, at 18-19. But this is not a challenge to the evidence. Gelman does not dispute that Kessler testified to a value for the practice. Rather, Gelman claims it is legal error to assign goodwill to the practice, at whatever value. Expert witnesses do not make Washington law, as Kessler himself recognized. RP 252. Necessarily, the court itself must "first determine if goodwill exists in a particular practice." *In re Marriage of Hall*, 103 Wn. 2d 236, 243, 692 P.2d 175 (1984).

It does not matter to Gelman's challenge that Fassler, or Kessler, have made up other names for "goodwill." (The court used "economic benefit expectancy," another term for goodwill, as described in Br. Appellant, at 21.) The problem remains the same:

the court awarded Gelman an asset that does not exist and has never existed. There is no support in Washington law for placing a value on the kind of practice in which Gelman works. And for good reason. Countless people have employment contracts, or work for companies that do. The expectation that you will continue to work, if supported by evidence, already figures into the court's distribution at marital dissolution. See *Hall*, 103 Wn.2d at 248 (earning capacity a factor to be considered at distribution). To give this same expectation a separate value and "award" it to the employee counts it twice and is flatly prohibited. *In re Marriage of Rockwell*, 141 Wn. App. 235, 248, 170 P.3d 572 (2007), citing *Hall*, 103 Wn.2d at 247. It is not an asset with separate value. See *Weber*, 19 *Wash. Pract.*, § 32.24, *Specific Assets – Goodwill of a business or profession* ("Goodwill should not be confused with earning capacity."). For example, a union machinist may work for Boeing, and Boeing may have a contract with the United States Air Force, but the machinist does not have an interest in Boeing distributable at dissolution (whether you call it goodwill or contract value). Gelman has a job, for now, that's all.

Kessler derived the value from the fact, as he saw it, that the group's contract meant it operated in a "restricted marketplace."

RP 250; see, also Exhibit 116 (“No competing practices due to contractual relationship with the hospital.”). Of course, Gelman’s solo practice did, also, have a contract, but that did not protect her from the orthopedic group shopping around for a new anesthesiologist after Gelman suffered depression. Contracts can lapse or be broken. And the contract at issue here is subject to termination by either side. RP 44.

Though CPA Kessler felt a certain nonchalance about proposing this new “asset,” our court has warned “that evaluation of goodwill must be done with considerable care and caution.” *Hall*, 103 Wn.2d at 243. Here, rather than exercising this care and caution, the trial court entirely abdicated its role in this necessary evaluation to the CPA. See RP 5, 325 (expressing reluctance to disagree with CPA). There is no goodwill in Gelman’s medical practice or any other value, by whatever name, apart from earning capacity.

**D. GELMAN’S ACCOUNTS RECEIVABLE WERE IN THE HOUSE OR THE BANK BUT NOT IN EXISTENCE AS A SEPARATE, DISTRIBUTABLE ASSET.**

We do not know why the trial court included Gelman’s accounts receivable in the distribution, since they had been spent,

mainly on maintaining the marital residence. Whatever reason the court may have had, it could not distribute a nonexistent asset.

First, Fassler's comparison of Gelman's accounts receivable to the bonus he received from his practice is not accurate; he compares apples to oranges. Br. Respondent, at 25. At trial, Fassler characterized his post-separation bonus as just that, net income in the form of a bonus from his practice. RP 306; see, also RP 126, 255 (income Fassler received from his practice group was net income, not gross accounts receivable). By contrast, Gelman's accounts receivable is a gross amount from which only a percentage will be collected and from which collected funds her business expenses must be paid. RP 246, 253.

In any case, by the time of trial Gelman's accounts receivable had been "used up." RP 246, 253; see, also, RP 36, 60 (spending her total income to pay expenses). Accordingly, Kessler did not bother to calculate a reduction for costs of doing business. RP 253; contra Br. Respondent, at 24. However, Fassler's bonus went into his individual bank account and, as far as the record reveals, still existed at the time of trial. RP 73-75, 127.<sup>10</sup>

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<sup>10</sup> Fassler's spreadsheet, adopted by the court, shows it in a US Bank account. CP 156.

In short, Gelman's point is very simple. Her accounts receivable did not exist at the time of trial. They went to pay her expenses, including the considerable expense to maintain the marital residence. Fassler received 60% of the proceeds from the sale of that residence. Gelman received 40%, discounted, basically, by the amount of the accounts receivable. As a practical matter, the accounts receivable cannot be distributed twice, yet that is precisely what the trial court did here.

This is also what happened in *In re Marriage of White*, 105 Wn. App. 545, 551, 20 P.3d 481 (2001). The wife received an inheritance, with which she paid family expenses (car and house payments). As the court there noted, once spent, the inheritance ceased to exist as a separate asset; it merged into the car and house, assets the court distributed. 105 Wn. App. 552. Likewise, here, the accounts receivable had merged into the remaining assets, whether it was the house or in the bank. The court could distribute it only once.

**E. FAILING TO CONSIDER THE WIFE'S EXPENDITURES ON THE COMMUNITY PROPERTY LIKEWISE TAXES HER TWICE.**

Fassler gets a lot of mileage out of Gelman's earnings, a little more than arithmetic and logic warrant. He argues that her

hugely disproportionate contribution to the maintaining the marital residence post-separation is “more than made up for” by her superior earning capacity. Br. Respondent, at 18. According to Fassler, this same earning capacity would justify awarding him a disproportionate share of the house. Id., at 15, 16. By his calculations, Gelman should pay more and get less. RP 271-272. If this was the trial court’s rationale, it is neither just nor equitable.

First, of course, defending the trial court’s exercise of discretion is not useful (Br. Respondent, at 16), since the record fails to demonstrate that exercise.

Second, Gelman does not dispute that she received a benefit in continuing to live in the house. More importantly, the parties’ youngest daughter received a benefit from being able to remain in the family home during her senior year of high school. Fassler completely ignores the impact on this daughter of the marriage’s termination. Her father leaves her mother for the girl’s personal physician, plunging her mother into depression, then her father gets diagnosed with cancer. Heedless of this, and before his cancer diagnosis, Fassler wanted Gelman out of the house so he could buy a new house. RP 53-54, 198. The child was the responsibility of both parents, as at least one of them recognized.

Further, Fassler's arithmetic continues to be more punishing to Gelman than true. For example, in calculating their relative post-separation contributions to the residence, he claims to have made a monthly payment of \$2000 from October 2009 through February 2010. Br. Respondent, at 17. The problem here is that he did not make the payments he was ordered to make. RP 35.

The bigger problem is how drastically Fassler discounts the consistently greater contributions Gelman made, both in mortgage payment and in maintenance expense. Fassler contributed \$33,200 total while Gelman contributed over \$250,000, including upkeep and repairs. CP 100. Fassler deducts \$5000 a month, for a whopping \$135,000, from Gelman's side of the ledger on the argument that Gelman enjoyed that much benefit from the house, because that was the realtors' opinion as to its fair rental value. Br. Respondent, at 17. It is unlikely that Washington law would even permit this. See *Nuss v. Nuss*, 65 Wn. App. 334, 339, 828 P.2d 627 (1992) (expressing doubt that Washington law permits charging a spouse rent for occupying the marital residence pending dissolution.) In any case, it is pretty cold to charge your spouse of over 20 years full rental value when (1) she remained in the house for the benefit of your distraught child, and (2) she repeatedly

sought to lower the mortgage through refinance. RP 50-54.

Fassler stubbornly refused to cooperate, insisting instead that Gelman bear all the risk for this benefit to their family. RP 197-198, 266-267. Eventually, the court ordered Fassler to cooperate in the refinancing effort, though, by then, many thousands of dollars had been lost. CP 154.

Finally, even if Fassler was correct in all respects, which he is most certainly not, even he has Gelman paying nearly \$70,000 more in mortgage payments alone. Yet she receives only 40% of the sale proceeds. This is completely topsy turvy. Generally, a disproportionate contribution to an asset from separate property is a reason to *give to the contributor* a disproportionate interest in the asset or a right to reimbursement. See, Br. Appellant, at 26-27. This is simply logical and this is plainly the opposite of what happened here. Even the case Fassler cites makes the point that it is “highly unusual” to charge a spouse rent and to then reduce her distributive share. *Nuss*, 65 Wn. App. at 338. In *Nuss*, as in most cases, the spouse who disproportionately maintained the marital property post-separation received a disproportionate share of the property at dissolution. The court here failed to account for

Gelman's huge contribution to the marital residence post-separation, either by overlooking it or by abusing its discretion.

### III. CONCLUSION

For these reasons, and those previously given, Lois Gelman respectfully asks for this Court to vacate the Decree of Dissolution and remand for correction of the errors described above; for redistribution in light of the proper factors and the requirement that distribution of assets at dissolution of a marriage be just and equitable, with consideration of the future economic circumstances of the parties and without sympathy or prejudice; and, finally, for an explanation by the trial court of the reasons for its various rulings.

Dated this 31st day of May 2011.

RESPECTFULLY SUBMITTED,



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PATRICIA NOVOTNY #13604  
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In re the Marriage of )  
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LOIS MARGARET GELMAN, )  
Appellant, )  
 )  
and )  
 )  
ERIC NEAL FASSLER, )  
Respondent. )  
\_\_\_\_\_ )

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Jayne Hibbing certifies as follows:

On May 31, 2011, I served upon the following true and correct copies of the Reply Brief of Appellant, Designation of Clerk's Papers Supplemental and this Declaration, by:

- depositing same with the United States Postal Service, postage paid
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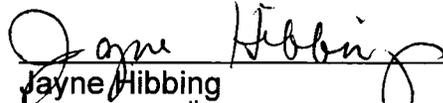
Glenn E. Macgilvra, Stella Lea Pitts  
Attorney at Law  
1411 4<sup>th</sup> Ave Ste 1405  
Seattle, WA 98101-2223

A. Kyle Johnson  
Lasher Holzapfel Sperry & Ebberson PLLC  
601 Union St Ste 2600  
Seattle, WA 98101-4000

Shelby Frost Lemmel, Kenneth W. Masters  
Masters Law Group PLLC  
241 Madison Avenue North  
Bainbridge Island, WA 98110

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I certify under penalty of perjury that the foregoing is true and correct.

  
Jayne Hibbing  
3418 NE 65<sup>th</sup> Street, Suite A  
Seattle, WA 98115  
206-781-2570