IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of: SANDRA PETRANEK, Respondent, and BRUCE BLATCHLEY, Appellant.	No. 41722-7-II UNPUBLISHED OPINION

Penoyar, J. — In this dissolution case, Bruce Blatchley appeals the trial court's order vacating the property distribution and the subsequent order distributing the property. He argues that the trial court erred by (1) vacating the dissolution decree without sufficient cause, (2) distributing a disproportionate amount of property to Sandra Petranek, (3) failing to recognize the original decree as a fair and binding agreement, and (4) enforcing a judgment while still within the 10-day stay period. We reject his arguments and affirm.

FACTS

I. Marriage and Real Property

Petranek and Blatchley married in September 1997. Blatchley worked on boats and in construction; Petranek remodeled houses. Shortly after the marriage, Blatchley broke his femur in a bicycle accident. He received a $56,000 settlement, compensating him for the injury, lost wages, and possibly pain and suffering.

In 1998, the couple used $33,000 of the settlement proceeds to purchase an unimproved five-acre property on Blossom Lane in Port Townsend. They lived in a small outbuilding on the

property and, later, they lived in an old trailer. In 1999, they used the property as security to borrow $23,000 to make property improvements. Both names were on the improvement loan.

Blatchley worked at the boat yard and instructed at a boat school. Petranek ran a small preschool from the property with five students and worked gardening, cleaning, and horse training. In 2000, the couple's gross income was $25,736.

In 2001, Petranek's father died, leaving her a cash and stocks inheritance totaling approximately $538,000. Petranek and Blatchley used inheritance funds to make major improvements on the Blossom Lane property, including installing electricity, a septic system, and running water. Petranek also used her inheritance funds for in vitro fertilization.

In 2002, the couple used inheritance money to buy an $115,000 unimproved property on Heron's Pond in Port Townsend. Blatchley and Petranek made only minor improvements to the Heron's Pond property and never lived there. In 2001, their gross income reduced to $8,000. In 2002 and 2003, they had no earned income, reporting only dividend income from Petranek's inheritance.

In 2003, they sold the Blossom Lane property, netting a $139,000 profit. They used the proceeds and a $70,000 loan from Petranek's sister to buy a $230,000 older home on Goodwin Road in Everson. Petranek repaid her sister that same year with inheritance funds.

In 2005, Petranek and Blatchley sold the Heron's Pond property, netting a $127,418 profit. Petranek and Blatchley lived in the Everson house, refurbishing it using their own labor, own expertise, and money from Petranek's inheritance. In 2005, Petranek and Blatchley sold the Everson house, netting a $431,000 profit. They used the proceeds and a $170,000 loan to buy a $588,000 home on Greenway in Port Townsend. Petranek and Blatchley borrowed $37,000 to

fence the five-acre horse pasture and to make landscaping improvements.

In 2006, the couple decided to adopt a child. Petranek paid $20,000 from her inheritance funds for the adoption. Blatchley "ma[de] noises" to the effect that he wanted to end the marriage, but the couple continued to live together. Report of Proceedings (RP) at 123.

In late July 2007, the adoption became final. Petranek and Blatchley also sold the Greenway house, netting $449,000 in proceeds, which they used to buy a $315,000 property on South Edwards Road in Port Townsend. Petranek and Blatchley took title to the South Edwards Road property in both of their names as husband and wife. After the purchase, $134,000 remained from the proceeds of the Greenway house. Petranek and Blatchley deposited the money into a joint bank account, but a few days later, Blatchley withdrew $119,000 from the joint bank account and deposited the money into his separate account.

In August 2007, Petranek, Blatchley, and their child moved into the South Edwards house. In November 2007, Blatchley took a trip to Hawaii, where he purchased a $40,000 unimproved property in his name only.

II. Procedural History

On December 31, 2007, Petranek filed for dissolution. Blatchley joined the petition and drafted the dissolution decree. The petition stated that the parties "are not separated" and "have equitably divided mutual property." Clerk's Papers (CP) at 2-3.

In April 2008, Petranek and Blatchley appeared to finalize the dissolution. They affirmed to the trial court that they had divided their property and liabilities, and they gave the trial court their documents, including the final dissolution decree, findings of fact and conclusions of law, final parenting plan, child support worksheet, and order of child support. Regarding the

paperwork, the court asked, "[T]o the extent that it divides your property and debts, do you believe that's fair and equitable?" RP at 5. Both parties answered affirmatively.

The findings of fact and conclusions of law stated that the parties: (1) had yet to separate, (2) had no separate property, and (3) had no community property other than the South Edwards property. They also stated, "There is no written separation contract or prenuptial agreement," but "[t]he separation contract or prenuptial agreement should be approved." CP at 26. Regarding the South Edwards property, the decree stated that Blatchley would retain one-third equity and Petranek would retain two-thirds equity. The decree did not provide for any other real or personal property. In a handwritten provision, the final parenting plan stated, "All parties reside together. Father has equal access." CP at 15. The trial court entered the dissolution decree, and no appeal followed.

In September 2009, more than a year after the dissolution decree entry, Petranek moved to vacate the property distributions under CR 60(b)(4) and (11), which provide for vacation based on fraud and "[a]ny other reason justifying relief." CP at 43; CR 60(b)(11). The trial court granted Petranek's motion, stating that the original decree did not award the South Edwards property to either party, did not mention the Hawaii property, and did not divide the bank accounts or personal property.

The property distribution issue went to trial. The trial court ruled that it was not "modifying" a property division as provided by RCW 26.09.170 but, rather, it made a "property division" as required by statute. RP at 265-66. The trial court's memorandum opinion added that from June 2001 to August 2007, Petranek and Blatchley relied on Petranek's inheritance to pay their living needs, to pay their bills, to pay for the adoption, and to purchase various real property

parcels. The trial court noted that Petranek's inheritance enabled them to invest their community labor in their real property, to improve their real property, and to sell that property for a profit. The court found that Petranek's separate property was the origin of the community property, and thus, she was entitled to a disparate share of the community property. The court also found that Blatchley's personal injury settlement was community property.

The trial court found that Petranek and Blatchley separated in April 2008, when the court entered the original dissolution decree. It found no written separation contract or prenuptial agreement existed and that both the South Edwards and Hawaii properties were community property. Further, the trial court concluded that fifteen other items were community property (i.e., a bank account, vehicles, building tools, and four horses) and determined the total value of community property to be $447,420. The trial court decided that Blatchley had no separate property and that the remainder of Petranek's inheritance funds was her separate property. It awarded Petranek 75 percent of the community property, including the South Edwards house, and it awarded Blatchley 25 percent of the community property, including the Hawaii property. The court incorporated by reference the parenting plan and child support order from the 2008 dissolution decree.

On December 22, 2010, the trial court entered the final judgment, which required Blatchley to transfer the South Edwards property via a quitclaim deed and to file a real estate excise tax affidavit. Petranek informed the court that Blatchley had not yet complied with those requirements, and she asked the court to include language ordering Blatchley to comply. Blatchley responded that although he had not yet complied, he did not intend to be uncooperative. Rather, he was using his automatic right of 10-day stay to assess whether to appeal. Petranek

argued that the stay did not apply to a quitclaim deed, but she agreed to the 10-day[1] stay before execution. The trial court amended the decree to include that, unless Blatchley moved for a stay, he must deliver the quitclaim deed by January 3, 2011 (more than ten days after entry of final judgment). Blatchley appeals.

ANALYSIS

Blatchley argues that the trial court abused its discretion by (1) vacating the dissolution without sufficient cause, (2) distributing a disproportionate amount of property to Petranek, (3) failing to recognize the original decree as a fair and binding agreement, and (4) enforcing a judgment while still within the 10-day stay period. We agree with Petranek that the trial court's decisions were tenable and reasonable.

I. Vacating The Dissolution Decree's Property Division

Blatchley first argues that the trial court abused its discretion by vacating the dissolution decree because (1) the original decree specified property distribution and (2) ambiguity is not a ground to vacate.[2] Petranek responds that the trial court properly vacated the original property division because its ambiguity and incompleteness are extraordinary circumstances. Because of the original decree's ambiguity, the parties' misstatements that there was no other property to divide, and the original decree's incomplete property disposition, the trial court reasonably

[1] During the colloquy, Petranek referred to the "15-day grace period," supplied by CR 62. RP at 18. It appears, however, that she misspoke and intended to discuss the "10 days" stay under CR 62.

[2]Blatchley also argues that the record does not support vacating the original dissolution decree because of fraud under CR 60(b)(4). But the trial court did not vacate the property portions of the dissolution decree because of fraud. Rather, the trial court vacated the property portions because they failed to dispose of property. Additionally, on appeal, Petranek does not argue that the trial court properly vacated the decree based on fraud. We need not consider this argument.

concluded that there were extraordinary circumstances to vacate the original decree.

A. Standard of Review

The trial court exercises its judgment and discretion when deciding whether to vacate a judgment under CR 60(b), and we will overturn that decision only when the court's decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997); *Kennedy v. Sundown Speed Marine, Inc.*, 97 Wn.2d 544, 548, 647 P.2d 30 (1982); *Barr v. MacGugan*, 119 Wn. App. 43, 48 n.2, 78 P.3d 660 (2003).

B. The Trial Court Properly Vacated The Original Dissolution Decree

RCW 26.09.170(1)(b) provides that a property disposition in a dissolution decree "may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state." CR 60(b), which allows courts to vacate prior judgments, is one such law allowing courts to reopen dissolution decrees. *In re Marriage of Thurston*, 92 Wn. App. 494, 498-99, 963 P.2d 947 (1998). It provides, in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representatives from a final judgment, order, or proceeding for the following reasons:
>
> . . . .
>
> (11) Any other reason justifying relief from the operation of the judgment.

CR 60(b).

A dissolution decree may be vacated for extraordinary circumstances to overcome a manifest injustice. *In re Marriage of Hammack*, 114 Wn. App. 805, 810, 60 P.3d 663 (2003) (citing *In re Marriage of Jennings*, 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999)). A trial court should exercise its authority liberally and equitably to preserve the parties' substantial rights. *Shaw v. City of Des Moines*, 109 Wn. App. 896, 901, 37 P.3d 1255 (2002) (citing *Vaughn v.*

Chung, 119 Wn.2d 273, 278-79, 830 P.2d 668 (1992)). The operation of CR 60(b)(11) is "'confined to situations involving extraordinary circumstances not covered by any other section of the rule.'" *Hammack*, 114 Wn. App. at 809 (quoting *State v. Keller*, 32 Wn. App. 135, 140, 647 P.2d 35 (1982)). The extraordinary circumstances "'must relate to irregularities extraneous to the action of the court.'" *Hammack*, 114 Wn. App. at 810 (quoting *In re Marriage of Tang*, 57 Wn. App. 648, 655-56, 789 P.2d 118 (1990)). Errors of law may not be used to vacate a judgment. *Hammack*, 114 Wn. App. at 810 (citing *Thurston*, 92 Wn. App. at 499). Typically, CR 60(b)(11) applies in situations involving reliance on mistaken information. *Tang*, 57 Wn. App. at 656.

An ambiguity in a dissolution decree can constitute extraordinary circumstances where there was a manifest injustice the parties did not contemplate at the time of the original decree. *Jennings*, 138 Wn.2d at 625-26. In *Jennings*, the original decree purported to divide assets equally, but it included inconsistent equations for dividing the husband's retirement. 138 Wn.2d at 614-15, 625. This ambiguity resulted in the wife receiving a significant reduction in payments when the husband began receiving disability payments and reduced retirement payments. *Jennings*, 138 Wn.2d at 617-18. The trial court subsequently granted the motion to vacate and ordered a new formula to calculate the retirement division. *Jennings*, 138 Wn.2d at 620-21. The Supreme Court affirmed, holding that the trial court reasonably concluded that the "drastic change in the status and amount of the monthly military retirement payments to [wife] constituted an 'extraordinary circumstance' under CR 60(b)(11)." *Jennings*, 138 Wn.2d at 625-26. The court added that the inconsistencies in formulas reinforce ambiguity, although the overall intent of the trial court was evident: to divide equally the retirement. *Jennings*, 138 Wn.2d at 626.

Here, the original dissolution decree's only property disposition was the South Edwards

property, but it only awarded "1/3 equity" to Blatchley and "2/3 equity" to Petranek. CP at 35-36. This created an ambiguity because "this reference to equity does not purport to divide the real property itself or any ownership interest thereof." *Stokes v. Polley*, 145 Wn.2d 341, 349, 37 P.3d 1211 (2001). Thus, while the decree awarded some monetary award, it did not award title or ownership. *Stokes*, 145 Wn.2d at 351. Further, the decree is silent to any other property, personal or real, and the findings of fact incorrectly state that there is no other separate or community property. The decree thus left out the bank accounts, all the personal property, the Hawaii property, and even the South Edwards property title and ownership.

We hold that, in these circumstances, the trial court's decision to vacate the original dissolution decree was not unreasonable or untenable. The dissolution decree's misstatements, ambiguity, and incomplete property disposition qualify as an extraordinary circumstance, where the trial court could not equitably divide the property.[3] *Jennings*, 138 Wn.2d at 625-26. Although a partition action on each property could be used to determine ownership of each property, the trial court's decision to vacate the original decree so that it could consider all of the property together and then divide it, for the first time, was reasonable. When the parties drafted the dissolution decree, they obviously did not foresee these problems. There were "extraordinary circumstances in this case which justified remedial action by the trial court to overcome a manifest injustice which was not contemplated by the parties at the time" of the original decree. *Jennings*,

[3]Blatchley argues that an ambiguous decree may be clarified but not modified, citing RCW 26.09.170(1). This argument ignores *Jennings*'s holding that a dissolution decree may be vacated if there is an ambiguity that requires a remedial action by the trial court to overcome a manifest injustice not contemplated by the parties. 138 Wn.2d at 625-26. The argument also ignores that RCW 26.09.170(1) allows decrees to be vacated under CR 60(b), which involves a different analysis. *Thurston*, 92 Wn. App. at 498-99.

138 Wn.2d at 625. The trial court's ruling vacating the original decree was tenable and reasonable.

II. Equitable Distribution of Property

Blatchley next argues that the trial court abused its discretion by disproportionately dividing the property. Petranek responds that the trial court acted within its discretion. We agree that the trial court's distribution was within its discretion.

In a proceeding for marriage dissolution:

> [T]he court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:
> (1) The nature and extent of the community property;
> (2) The nature and extent of the separate property;
> (3) The duration of the marriage or domestic partnership; and
> (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

RCW 26.09.080. The statute directs the trial court to weigh all of the factors, within the context of the parties' particular circumstances, to come to a fair, just, and equitable division of property. The character of the property is a relevant but not controlling factor. *In re Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985). "The trial court is in the best position to assess the assets and liabilities of the parties and determine what is 'fair, just and equitable under all the circumstances.'" *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999) (quoting *In re Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977)). Regarding a trial court's decision in a dissolution action, our Supreme Court has counseled:

> Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion.

In re Marriage of Landry, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985) (internal citation omitted).

Blatchley argues that substantial evidence does not support the trial court's findings of fact regarding Petranek's amount of inheritance. But Petranek presented probate documents; her testimony; and her sister's testimony, who received the same inheritance share as Petranek. Substantial evidence supported the trial court's findings.

Blatchley also argues that the trial court improperly calculated his community contributions because "[e]ven when there was very little or no reported income, he was still working either under the table or directly improving [their] properties [by his own labor]." Appellant's Br. at 25. But the trial court reasonably based its findings on the parties' income tax returns to find that from June 2001 to August 2007, Blatchley and Petranek relied on Petranek's inheritance for their living needs, to pay their bills, to pay for adopting their child, and to purchase various real property parcels. Blatchley's argument that the trial court should have somehow calculated his undocumented "under the table" work as a laborer is unpersuasive. Appellant's Br. at 25. And the trial court considered Blatchley's labor contributions to the parties' real property. The court reasonably found, however, that Petranek's inheritance enabled both parties to invest their community labor in their real property, to improve their real property, and to sell that property for a profit.

Next, Blatchley argues that the trial court should have treated his personal injury settlement as his separate property and as the foundation of the parties' profitable real estate ventures. But Blatchley acknowledged that part of his settlement was community property compensation and that he could not account for the settlement's apportionment of money. The trial court thus reasonably found that Blatchley's $56,000 personal injury settlement in 1998 did not entitle him to a disparate share of community property, despite finding that Petranek's $538,000 inheritance in 2001 entitled her to a disparate share.

Finally, Blatchley posits that the 75/25 split of community property was unfair and unreasonable. An "equitable distribution of property is not mathematical preciseness, but fairness." *In re Marriage of Rink*, 18 Wn. App. 549, 553, 571 P.2d 210 (1977) citing *In re Marriage of Clark*, 13 Wn. App. 805, 810, 538 P.2d 145 (1975)). Fairness "is attained by considering all of the circumstances of the marriage" and "by the exercise of wise and sound discretion not by set or inflexible rules." *Rink*, 18 Wn. App. at 553 (citing *Clark*, 13 Wn. App. at 310). Here, the trial court reasonably found that Petranek should receive a disproportionate property amount because the parties relied on her inheritance. The trial court's property distributions are not manifestly unreasonable or based on untenable grounds or untenable reasons.

III. Dissolution Agreement

Blatchley argues that the trial court abused its discretion by failing to recognize the original decree as a fair and binding pro se settlement agreement. Petranek responds that the trial court acted within its discretion. We agree with Petranek that the trial court acted within its discretion when it found that the parties' proposed final decree was not equivalent to a post-nuptial property agreement.

"[A]micable agreements are preferred to adversarial resolution of property and . . . the separation contract is binding upon the court unless it finds that the contract was unfair at the time of its execution." *In re Marriage of Little*, 96 Wn.2d 183, 193, 634 P.2d 498 (1981). To determine whether a settlement agreement is valid, we look to:

> (1) [W]hether full disclosure has been made by respondent of the amount, character and value of the property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge by the spouse of her rights.

In re Marriage of Cohn, 18 Wn. App. 502, 506, 569 P.2d 79 (1977). Parties are not required to obtain independent legal advice before executing the property settlement agreement. *Cohn*, 18 Wn. App. at 509. Rather, if a party receives legal advice, such advice must be neutral. *Cohn*, 18 Wn. App. at 509.

Here, the agreement between the parties consisted of their verbal agreement reduced to writing in their dissolution petition. In their dissolution petition, the parties voluntarily agreed that Blatchley would retain one-third equity and Petranek would retain two-thirds equity of the South Edward property. Both Petranek and Blatchley proceeded pro se, and despite allegations by Petranek that she felt coerced, the trial court made no coercion or fraud findings. When the court entered the original dissolution decree, both parties affirmed that they believed that the property distribution was fair and equitable. The findings of fact and conclusions of law affirmed that they had no separate property and that they had no community property other than the South Edwards property.

Although Blatchley's argument that the dissolution petition was a binding post-nuptial property agreement is not irrational, it circumvents CR 60(b)'s and RCW 26.09.170's provisions,

which are the exclusive bases for modifying or vacating final judgments. *State v. Scott*, 20 Wn. App. 382, 387, 580 P.2d 1099 (1978). That agreement was also internally inconsistent: it stated both: "There is no written separation contract or prenuptial agreement" and "The separation contract or prenuptial agreement should be approved." CP at 26. Because of this internal inconsistency, the trial court reasonably concluded that the parties did not have a binding post-nuptial property agreement. We hold the trial court did not abuse its discretion in finding that the original decree was not a binding settlement agreement.

IV. CR 62

Finally, Blatchley argues that the trial court abused its discretion by enforcing a judgment while still within the 10-day stay period by including language in the decree ordering Blatchley to comply by January 3, 2012. Petranek responds that the trial court neither executed judgment prior to the 10-day stay nor conducted a proceeding to enforce the judgment. Petranek is correct.

CR 62(a) provides:

> [N]o execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Upon the filing of a notice of appeal, enforcement of judgment is stayed until the expiration of 14 days after entry of judgment. Unless otherwise ordered by the trial court or appellate court, an interlocutory or final judgment in an action for an injunction or in a receivership action, shall not be stayed during the period after its entry and until appellate review is accepted or during the pendency of appellate review.

Here, on December 22, 2010, the trial court entered the final judgment, which required Blatchley to give Petranek a quitclaim deed and a real estate excise tax affidavit for the South Edwards property. Petranek asked the trial court to include language ordering Blatchley to comply. Blatchley responded that while he had not given her the documents, he did not intend to be uncooperative. Rather, he was using his automatic right of 10-day stay while he assessed

decisions involving appeal. The trial court added language to the decree requiring Blatchley to comply by January 3, 2012, more than 10 days after the final judgment entry.

Blatchley argues that the trial court executed the judgment or took action to enforce the judgment by including the enforcement language. Petranek responds that this type of enforcement language appears in dissolution decrees frequently and that the language does not violate the rule because it applies after the 10-day stay period.

Neither party offers case law to support their respective positions. The decree's language merely specified the time of delivery for the quitclaim deed and the real estate excise tax affidavit. Blatchley's argument that this language "eliminated [his] ability to concentrate on post-judgment relief" is difficult to understand and not persuasive. Appellant's Br. at 41. We hold that the trial court did not abuse its discretion by including a delivery date for the quitclaim deed and excise tax affidavit.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, J.

I concur:

Armstrong, J.

Johanson, A.C.J. (dissenting) — I respectfully dissent because a dissolution decree's property disposition should not be vacated absent extraordinary conditions.

Facts

In December 2007, Petranek and Blatchley filed a joint petition for marriage dissolution. The joint petition stated that the parties "have equitably divided mutual property." Clerk's Papers at 3. In April 2008, Petranek and Blatchley appeared before the trial court. The trial court asked, and they affirmed, that they had divided their property and liabilities. The trial court inquired, "[T]o the extent that it divides your property and debts, do you believe that's fair and equitable?" Report of Proceedings at 5. Both parties said yes. The decree stated that the parties have no separate property and that Blatchley would retain 1/3 equity and Petranek would retain 2/3 equity in the South Edwards property. The decree did not mention any other real or personal property.

Over a year later, in October 2009, the trial court granted Petranek's motion to vacate the dissolution decree's property disposition because the decree did not award the South Edwards property to either party, it did not mention the Hawaii property, and it did not divide bank accounts or personal property.

Analysis

A trial court lacks authority to modify even its own decree absent conditions justifying the judgment's reopening. *In re Marriage of Thompson*, 97 Wn. App. 873, 878, 988 P.2d 499 (1999). The trial court may not revoke or modify a property disposition unless it finds that conditions exist that justify the judgment's reopening under Washington law. RCW 26.09.170(1).

CR 60(b) permits the trial court to relieve a party from a final judgment, order, or proceeding for specified reasons, including:

> (11) Any other reason justifying relief from the operation of the judgment.
>
> The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken.

Relief under CR 60(b)(11) is "'confined to situations involving extraordinary circumstances not covered by any other section of the rule.'" *In re Marriage of Hammack*, 114 Wn. App. 805, 809, 60 P.3d 663, *review denied*, 149 Wn.2d 1033 (2003) (quoting *State v. Keller*, 32 Wn. App. 135, 140, 647 P.2d 35 (1982)). Failure to make a property award by "inadvertence" is not an extraordinary circumstance. *Ross v. Pearson*, 31 Wn. App. 609, 614, 643 P.2d 928, *review denied*, 97 Wn.2d 1030 (1982).

Separate from its discretion to modify or revoke, the trial court also has discretion to *clarify* an original dissolution decree under RCW 26.09.170. *In re Marriage of Jennings*, 138 Wn.2d 612, 625, 980 P.2d 1248 (1999). An ambiguous decree can be "'subject to a declaratory action to ascertain the rights and duties of the parties.'" *Jennings*, 138 Wn.2d at 625 (quoting *Byrne v. Ackerlund*, 108 Wn.2d 445, 453, 739 P.2d 1138 (1987)). Further, a declaratory action is proper to clarify ambiguous language in the decree or to divide property not disposed in the decree. *Byrne*, 108 Wn.2d at 453.

I reject Petranek's argument that because her original property decree did not expressly dispose of all of the couple's property, the "ambiguity" constituted an extraordinary circumstance. Br. of Resp't at 12. An incomplete property disposition is a common, and not an "extraordinary" circumstance. CR 60(b)(11) is confined to extraordinary circumstances that are substantial deviations from a prescribed rule. *In re Dependency of J.M.R.*, 160 Wn. App. 929, 937 n.2, 249 P.3d 193, *review granted*, 172 Wn.2d 1017 (2011).

Petranek and Blatchly jointly filed a petition for dissolution and jointly appeared before the court to affirm that the property disposition was fair and equitable. There is nothing to indicate that anything out of the ordinary occurred. Within one year of the decree's entry, Petranek could have filed to vacate the original decree for "[m]istakes, inadvertence, surprise, excusable neglect" under CR 60(b)(1) or perhaps for newly discovered evidence under CR 60(b)(3). But Petranek cannot assert these provisions more than one year after entry of judgment. *See Bergren v. Adams County*, 8 Wn. App. 853, 857, 509 P.2d 661, *review denied*, 82 Wn.2d 1009 (1973). In addition, she did not seek a declaratory judgment to clarify ambiguous language or to divide omitted property. Instead, she sought and received a vacation of the decree's property disposition. Extraordinary circumstances do not exist that allow vacation of the dissolution decree's property disposition 18 months after entry.

Relying on *Jennings*, the majority erroneously concludes extraordinary circumstances exist that justify vacation. *See* majority at 9. But *Jennings* is distinguishable. In *Jennings*, the dissolution decree granted Jennings, as her community share, one-half of her former husband's unliquidated monthly military retirement benefits. *Jennings*, 138 Wn.2d at 613. Later, a Department of Veterans Affairs' decision allocated a substantial portion of the retirement benefits as disability benefits, which are not subject to marital division; thus, the later decision significantly reduced Jennings's community share. *Jennings*, 138 Wn.2d at 613. Jennings, unlike Petranek, moved the trial court *either* (1) to vacate the dissolution decree, (2) to modify the decree's maintenance payments, or (3) to clarify that the decree required specific payments. *Jennings*, 138 Wn.2d at 617-18.

In response, the *Jennings* court held that "the trial court could reasonably conclude the

drastic change in the status and amount of the monthly military retirement payments to [Jennings] constituted an 'extraordinary circumstance' under CR 60(b)(11)." *Jennings*, 138 Wn.2d at 625-26. Additionally, the *Jennings* court held that the trial court did not abuse its discretion in *clarifying* the original dissolution decree because the intent was evident yet the decree was ambiguous. *Jennings*, 138 Wn.2d at 625-26. Thus, the *Jennings* court did not hold that an ambiguous provision is per se an extraordinary circumstance, nor did it hold that a decree that omits property constitutes an extraordinary circumstance. Rather, the *Jennings* court held that later intervening circumstances, which drastically change the effect of the original decree's existing provisions is an extraordinary circumstance.

Well-established Washington law provides that community property not awarded in a decree is held by the parties as tenants in common. *Chase v. Chase*, 74 Wn.2d 253, 257-58, 444 P.2d 145 (1968); *In re Marriage of Buchanan*, 150 Wn. App. 730, 735, 207 P.3d 478 (2009). That is the proper remedy here. There is nothing extraordinary about these facts to justify vacation of the dissolution decree's property disposition. I would hold that the trial court abused its discretion when it vacated the dissolution decree's property disposition. Thus, I would reverse.

Johanson, A.C.J.