

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In the Matter of the Marriage of	)	No. 64741-5-1
EDWARD A. LINDSEY,	)	DIVISION ONE
Respondent,	)	
and	)	
DEBORAH R. LINDSEY,	)	UNPUBLISHED
Appellant.	)	FILED: <u>March 12, 2012</u>
	)	

Cox, J. — Deborah Lindsey appeals from a decree of dissolution, alleging that the trial court’s division of marital property was inequitable. But substantial evidence supports the court’s determination of property value, and the court properly considered all of the relevant factors when dividing the property. Because Lindsey has failed to demonstrate any error or abuse of discretion, we affirm.

Edward Lindsey and Deborah Lindsey met in Texas while attending college and were married in 1987. At the time of the marriage, Edward<sup>1</sup> worked in management for Wal-Mart, and Deborah taught elementary school. Edward’s position eventually required the parties to move from Texas to Arkansas, where they purchased a home in Bentonville. The couple then moved to Washington and purchased a home in Kirkland. After Edward left Wal-Mart, he and Deborah purchased an insurance agency, which Edward now runs.

After the couple’s first child was born in 1996, Deborah worked full-time in the home. A second child was born in 1999.

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<sup>1</sup> For purposes of clarity, we refer to the parties by their first names.

On April 16, 2007, Edward petitioned for dissolution. After several delays, the case went to trial in May and June 2009. On June 22, 2009, the trial court announced its oral decision to award the property in the proportion of 57/43 in favor of Deborah. At issue on appeal are the court's evaluation and distribution of the following community assets:

Edward: (1) the Kirkland residence (net value \$394,862); (2) two parcels of timber-producing land in Camden, Arkansas (\$196,000); (3) the insurance business (\$100,000); and (4) one-third of the community financial accounts (\$102,159).

Deborah: (1) the house in Bentonville, Arkansas (\$130,070); (2) three unimproved lots located near the Bentonville house (\$255,000); the Colorado condominium (\$115,000); and (4) two-thirds of the community financial accounts (\$204,316); (5) a lien of \$100,000 on the Kirkland property, payable within three years.

Edward assumed the underlying mortgage on the Kirkland house and a credit card debt of about \$97,500. The two timber tracts were unencumbered. The court ordered Edward to pay \$30,000 of Deborah's attorney fees and maintenance in the amount of \$2,500 per month for three years, beginning July 1, 2009, and then \$1,000 per month for two years.

Deborah assumed mortgages on the Colorado condo and the Bentonville house. The three Bentonville lots were unencumbered. Deborah had the option of assuming approximately \$31,000 in credit card debt or reducing the \$100,000 lien to

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\$70,000.

The court entered findings of fact, conclusions of law, and a decree of dissolution on November 12, 2009. Deborah appeals.

RCW 26.09.080 requires the trial court to consider a number of factors in making a “just and equitable” distribution of the marital property, including (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the division of the property is to become effective. The trial court is necessarily in the best position to determine under the circumstances what is just and equitable, and we will reverse its decision only if there is a manifest abuse of discretion.<sup>2</sup>

Deborah contends that the trial court failed to give proper consideration to all relevant factors when dividing property, including her economic circumstances and health, Edward’s post-separation waste of marital assets, and the nature and value of the parties’ assets and debts. She claims that the purported 57/43 percentage split of the parties’ assets in her favor was therefore misleading and inequitable.

We note initially that Deborah’s claims of an inequitable property division rest in part on matters occurring after the trial court’s decision. Among other things, she alleges that she did not ultimately receive the full value of the assets that the trial court awarded. But our review is necessarily limited to the evidence and arguments

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<sup>2</sup> See In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999).

that were before the trial court at the time a decision was made.<sup>3</sup> Events occurring after trial must be addressed in post-trial proceedings.

Contrary to Deborah's assertions, the trial court was well aware that the parties were dissolving a long-term marriage and that she had not worked out of the home since the parties moved to Washington. The court also understood that teaching jobs were relatively scarce and that Deborah would require additional training to obtain a Washington State teaching certificate. The court awarded maintenance for a total of five years.

But the court also considered evidence about Deborah's past efforts to obtain employment and her future plans. During her testimony in June 2009, she acknowledged that she had not sought any career counseling or guidance and that "I have no idea what I can do."<sup>4</sup> The court noted its concern with Deborah's failure to complete any application for employment during the nearly three years since the parties' separation. The court's findings that Deborah "has the ability, competency, and intelligence to secure gainful employment outside of the home" and that she was "completely unrealistic and also totally under performing in her ability"<sup>5</sup> are unchallenged on appeal.<sup>6</sup>

Deborah next suggests that the trial court failed to consider her current health concerns and inability to pay for medical insurance. But after testifying about her

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<sup>3</sup> See RAP 9.1, 9.11.

<sup>4</sup> Report of Proceedings (June 3, 2009) at 37.

<sup>5</sup> Finding of Fact 2.12, Clerk's Papers at 147.

<sup>6</sup> See Zunino v. Rajewski, 140 Wn. App. 215, 220, 165 P.3d 57 (2007) ("Unchallenged findings of fact are verities on appeal.").

medical conditions, Deborah characterized herself as “in good health”<sup>7</sup> and acknowledged that there was no “physical reason or any health-related reason” preventing her employment.<sup>8</sup>

Deborah has failed to demonstrate any error in the trial court’s consideration of her age, health, physical condition, and future earnings prospects.

Deborah contends that Edward “systematically gutted nearly every significant account the parties had acquired during marriage.”<sup>9</sup> She alleges that he should therefore be held accountable for about \$440,000 in community assets that he wasted or concealed. The trial court rejected an essentially identical claim.

Deborah has provided a detailed summary of trial testimony about certain post-separation transfers or withdrawals of various sums from community accounts. But she has not identified evidence or presented meaningful argument establishing that any of the alleged transactions constituted a waste of community assets. After reviewing all of the accounts and exhibits, the court found that about \$283,000 remained in the parties’ accounts. The court rejected Deborah’s claim that \$500,000 was unaccounted for and concluded that the majority of the funds had been used for community expenses. The court acknowledged that there had been “some failure” of Edward to account for all of the money, but concluded that it was not “significant.”<sup>10</sup>

In its oral decision, the court twice referred to exhibit 72 as supporting its

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<sup>7</sup> Report of Proceedings (June 3, 2009) at 78.

<sup>8</sup> Id. at 79.

<sup>9</sup> Brief of Appellant at 27.

<sup>10</sup> Report of Proceedings (June 22, 2009) at 5.

review of the parties' accounts. Deborah has not provided the exhibit for this court's review or otherwise addressed it.<sup>11</sup> Under the circumstances, she has not established any error in the court's decision.

Deborah next contends that the trial court erred in valuing and allocating the parties' real property. She claims that the court improperly ignored the parties' requests to order the sale of all the property, valued the property inconsistently, and unfairly awarded her property without a corresponding source of funds to pay for or maintain the property. We review the trial court's property value determinations for an abuse of discretion.<sup>12</sup>

Deborah maintains the court should have granted the parties' request to order all of the real property sold as part of the dissolution proceedings. The court considered this approach but then decided it would be unfair to require an immediate sale. By awarding the properties outright, the court allowed the parties to make the decision of whether and when to sell at a time and in the manner most favorable for their specific circumstances. Given the economic downturn and depressed real estate market, we cannot say that the trial court's decision was unreasonable.

Deborah's claim that the trial court's allocation left her with no funds to maintain the properties or pay the mortgage is not persuasive. She complains that the court unfairly awarded Edward the two Arkansas timber tracts, which provided an income stream from logging every seven years. But although both the Colorado

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<sup>11</sup> See Story v. Shelter Bay Co., 52 Wn. App. 334, 345, 760 P.2d 368 (1988) (appellant has the burden of providing sufficient record to review the issues on appeal).

<sup>12</sup> In re Marriage of Gillespie, 89 Wn. App. 390, 403, 948 P.2d 1338 (1997).

condominium and the Arkansas home awarded to Deborah had outstanding mortgages, both properties also had provided rental income. At the time of trial, the Arkansas house was providing a rental income of \$2,500 per month. The court also awarded Deborah three unencumbered vacant lots adjacent to the Arkansas home, \$204,000 from the parties' financial accounts, and a \$100,000 lien on the Kirkland home, payable in three years. Under the circumstances, the assets provided Deborah with financial flexibility to maintain the properties or prepare them for sale.

Deborah also contends that the trial court did not properly consider market depreciation when valuing the real property. But this assertion appears to rest primarily on the court's failure to adopt her own appraisals of property value. The trial court is not obligated to accept one opinion of value over another. Rather, the court "may reject opinion testimony in whole or in part in accordance with its judgment of the persuasive character of the evidence presented."<sup>13</sup> In each case, the trial court identified the appraisal it relied on and then generally reduced the value to reflect the depressed real estate market. Because substantial evidence supports the trial court's determination of value, we will not disturb it on appeal.<sup>14</sup>

Deborah contends that the trial court erred in not deducting the costs of a sale from the value of her real property. Whether to award or deny a deduction for the costs of sale is within the trial court's discretion.<sup>15</sup>

Deborah does not indicate whether she raised this issue in the trial court.

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<sup>13</sup> In re Marriage of Pilant, 42 Wn. App. 173, 178-79, 709 P.2d 1241 (1985).

<sup>14</sup> Marriage of Gillespie, 89 Wn. App. at 403.

<sup>15</sup> In re Marriage of Stenshoel, 72 Wn. App. 800, 811, 866 P.2d 635 (1993).

Moreover, a deduction for the costs of sale is generally appropriate only if there is evidence in the record “(1) showing that the party who will receive the asset intends an imminent sale, and (2) supporting the estimated costs of sale.”<sup>16</sup> Although Deborah indicated her desire to sell the properties, she does not identify any evidence in the record suggesting that a sale was imminent or what the estimated costs would be. The trial court therefore did not abuse its discretion in failing to deduct the costs of a sale from the property values.

Deborah claims that the trial court erred by allocating her the debt on the properties that it awarded her without providing any funds to make payments on the mortgages. But for the reasons set forth above, the assets awarded Deborah were sufficient to allow her an opportunity to carry out her desire to sell the properties in a reasonable and timely manner.

Deborah next contends that the trial court erred when it permitted Edward to pay her attorney fee award under RCW 26.09.140 from community funds. She cites no language in the statute or any authority to support this conclusory assertion. Accordingly, we decline to consider it.<sup>17</sup>

In summary, the record establishes that the trial court considered all of the relevant factors in dividing the parties’ properties. The evidence also supports the trial court’s valuation of the property. The trial court did not abuse its discretion in dividing the marital assets.

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<sup>16</sup> In re Marriage of Berg, 47 Wn. App. 754, 759, 737 P.2d 680 (1987).

<sup>17</sup> See State v. Johnson, 119 Wn.2d 167, 171, 829 P.2d 1082 (1992) (appellate court will not review issue that is unsupported by relevant authority or persuasive argument).



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Deborah requests an award of attorney fees on appeal under RCW 26.09.140. But she has failed to comply with RAP 18.1(c), which requires submission of an affidavit of financial need at least 10 days before consideration of the appeal. We therefore decline her request.<sup>18</sup>

We affirm the decree.

/s/ Cox, J.

WE CONCUR:

/s/ Lau, J.

/s/ Appelwick, J.

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<sup>18</sup> See In re Marriage of Crosetto, 82 Wn. App. 545, 565-66, 918 P.2d 954 (1996).