



Greg and Oksana Garver were married in 2003 and separated in 2008. In January 2010, the trial court entered a decree of dissolution. Oksana was 44, and Greg was 51. There are no children from the marriage. Greg has a daughter from a previous relationship, O.G., who is 11. O.G.'s mother is deceased. Oksana also has a daughter from a previous relationship, Maryna Vasylichenko, who is 19. Before the marriage, Oksana and her daughter lived in Kharkiv, Ukraine.

When the parties married, Oksana had no separate property. Greg had substantial separate property assets. Those included approximately \$100,000 in cash in a Bank of America account and \$170,000 in stock in an A.G. Edwards & Sons Inc. account, all inherited from his mother. He also had two IRAs (individual retirement accounts) and a 401(k) plan through his employer, The McGregor Company. Greg did not make any deposits into the separate property IRA accounts with community funds during the marriage. Greg also owned a remainder interest in a trust that owns the real property in Walla Walla that he lived on with his daughter. This interest was created in the 1960s, following the death of Greg's grandfather. Greg's father had a lifetime interest in the trust, while Greg and his brother had "survivor benefits." Any income from this property went to Greg's father, not to Greg.

Greg and his daughter lived on the Walla Walla property before the marriage, and Greg paid \$300 a month in rent. He received steady income and benefits from his job with McGregor. Oksana has a college degree in biology, and after a stretch where she was unemployed in Walla Walla, she eventually

sought employment at Washington State University in Pullman, Washington. The family moved to Pullman to support Oksana, and Greg was able to continue working for McGregor, through their office in nearby Colfax.

In Pullman, the family initially lived with Greg's boss, but then made arrangements to purchase a house. The deed for the home was conveyed to "Greg Garver, a Married Man as his sole and separate property." At that time, Oksana also signed a quitclaim deed for the home, "for and in consideration of establishing separate property" to Greg. The house's purchase price was \$146,500. Greg made the down payment of \$31,000 with funds from his separate Bank of America account. Greg was listed as the only borrower and paid the mortgage with funds from the same separate bank account.

After living in Pullman for six or seven months, Oksana lost her job with Washington State University. The family decided to move to Seattle to help her find a new job. Greg resigned his employment with McGregor. When they first arrived in Seattle, neither party was employed. Greg paid for their living expenses using his separate property stocks. He was able to rent the Pullman house, which provided sufficient monthly income to cover the cost of the mortgage and management fees.

In Seattle, Greg was unable to find employment equivalent to his job with McGregor. He purchased a semi-tractor so that he could drive loads on his own. He initially purchased a 1980 Peterbilt semi-tractor for \$15,000. That semi-tractor "blew up," and Greg next purchased a 2000 Peterbilt semi-tractor for \$50,000. He made these purchases and generally funded the costs of his start-

up trucking business using money from his separate property accounts. The business had no employees and Greg was the sole driver. At the time of trial, the business had closed and both semi-tractors were “junk.”

Oksana found employment in Seattle with MDS Pharma Services Inc. in Bothell, earning approximately \$21.50 an hour. She put her earnings into an account in her name only, rather than the couple's joint account.

In May 2008, Oksana and her daughter moved out of the family home. Oksana filed a petition for dissolution on June 11, 2008.

Once Oksana moved out, Greg was unable to continue his work driving a truck, because O.G. was still in school and he needed to care for her. Greg and O.G. eventually moved to Dayton, Washington, so that O.G. could stay with her aunt and Greg could continue his work. Greg eventually returned to work for McGregor. He was hired on a seasonal basis only, earning \$13.50 per hour. Greg was only able to get 20 hours of work the month before trial. By the month of trial, Greg was unable to work at all based on an injury to his ankle and knee. He received unemployment benefits of \$240 a week. Oksana moved to North Carolina, where she began employment with Duke University, earning \$15 per hour.

A four day trial took place in January 2010. The trial court found that Greg's separate property, which had been worth over \$300,000 before the parties married, had been greatly reduced to less than half of its former value by the time of trial. The trial court also found that Oksana and Greg's community assets were less than \$10,000, in addition to community liability of approximately

\$6,000. The trial court awarded Greg all of his separate property, including: the bank accounts he owned before the marriage; his remainder interest in the Walla Walla property; the Pullman home; and the Peterbilt semi-tractors, purchased during their marriage. The trial court found that Greg was earning much less than Oksana at the time of trial and awarded Greg the majority of their relatively small community property assets. The court awarded Oksana the money in the bank accounts in her name and ordered her to pay the community's tax liability of approximately \$5,475. The court denied Oksana's request for spousal maintenance of \$300 per month for four years. And the court awarded Greg \$8,661 in attorney fees and costs, based on Oksana's intransigence.

Oksana timely appeals.

## DISCUSSION

### I. Characterization of the House in Pullman

Oksana argues that the house in Pullman should be community property. The trial court's characterization of property as community or separate is a question of law that we review de novo. In re Marriage of Mueller, 140 Wn. App. 498, 503-504, 167 P.3d 568 (2007). The factual findings supporting the court's characterization require substantial evidence to support them. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). The character of property as separate or community is established at the point of acquisition. Id. Property acquired during the marriage has the same character as the funds used to buy it. Id. at 449. Funds are separate if owned before marriage. Id. at 447;

RCW 26.16.010.

Here, the trial court found that Greg purchased the home exclusively with funds from his separate property bank accounts and that he made the monthly payments on the home using only his separate funds. The trial court also found that “[t]he community never invested any financial resources in this property, therefore the community has no interest in this property and it is the separate property of the husband.” Oksana does not assign error to this or any of the trial court’s findings of fact, and they are thus verities on appeal. State v. Eriksen, 170 Wn.2d 209, 215 n.4, 241 P.3d 399 (2010). But, even if she had properly assigned error to the trial court’s finding about the Pullman house, there is substantial evidence to support it. Greg provided evidence that he made the purchase and the monthly payments with funds from his personal bank account. And, Oksana provided no evidence to the contrary at trial.

Additionally, Oksana executed a quit claim deed when the home was purchased. In that deed, she expressly waived her interest in the property, “in consideration of establishing separate property” for Greg. Oksana argues that she signed the quit claim deed based on the bank’s financing requirements and her uncertain residency/citizenship status. But, the trial court found that Oksana “was advised in advance of the closing that the home was to be [her] husband’s separate property and that this was the purpose of the quit claim deed.” The trial court correctly characterized this asset.

## II. Valuation of Two Peterbilt Semi-tractors

Oksana argues that the trial court erred in its valuation of the two Peterbilt

semi-tractors that Greg purchased for his business, Garver Trucking, during the marriage. She contends that the trial court erroneously assigned \$0 as the value for the two semi-tractors, despite Greg's testimony that they had a combined value of between \$40,000 and \$75,000.

Oksana's argument is unpersuasive. First, the trial court did not list the semi-tractors' value as \$0, but listed their value as unknown. Second, her argument confuses what Greg paid for the semi-tractors in 2005, with the semi-tractors' actual value at the time of the proceedings in 2010. Greg testified to purchasing the first semi-tractor, a 1980 Peterbilt, for \$15,000, and the second semi-tractor, a 2000 Peterbilt, for \$50,000. But, he also testified that the first semi-tractor "blew up" before trial, that he had "lots of problems with it," and that both semi-tractors were "junk." A trial court has broad discretion in valuing property in a dissolution action, and its valuation will not be reversed on appeal absent a manifest abuse of discretion. See In re Marriage of Gillespie, 89 Wn. App. 390, 403, 948 P.2d 1338 (1997). In absence of any evidence from Oksana about the semi-tractors' value, the trial court did not abuse its discretion in finding their value to be "unknown."

### III. Spousal Maintenance

In her petition for dissolution, Oksana requested \$300 per month in maintenance for four years. Oksana argues that the trial court erred in its decision not to award spousal maintenance to either party. An award of spousal maintenance is within the broad discretion of the trial court. In re Marriage of Luckey, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). The only limitation on the

amount and duration of maintenance is that the award must be just. Id. The relevant statutory factors the court must consider include the financial resources of each party; the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; the standard of living during the marriage; the duration of the marriage; and the time needed to acquire education necessary to obtain employment. RCW 26.09.090; In re Marriage of Vander Veen, 62 Wn. App. 861, 867, 815 P.2d 843 (1991).

Oksana argues that the trial court erred, first focusing on an incorrect statement that Greg's counsel made. In her closing argument, Greg's counsel described Oksana's request for maintenance as \$3,000 per month, rather than as \$300 per month. But, Greg's counsel corrected her mistaken assertion immediately after the mistake was brought to her attention. There is no evidence or argument that this mistake had any impact on the trial court's decision not to award maintenance.

Oksana next argues that the trial court abused its discretion by failing to consider Greg's "remainder interest in substantial and income-generating farm properties in Eastern Washington." This argument also fails. The evidence at trial demonstrated, and the trial court found, that Greg's remainder interest "provides no immediate benefit to [the] husband." Oksana does not assign error to this finding of fact, and it is thus a verity on appeal. Eriksen, 170 Wn.2d at 215 n.4.

The trial court entered detailed findings of fact, which reflect a careful and proper consideration of the statutory factors under RCW 26.09.090. The court



found: “Maintenance should not be ordered because both parties are capable of supporting themselves at this time, but neither party is in a position to pay maintenance to the other party at this time.” The court properly considered the factors outlined in RCW 26.09.090, including the short duration of the marriage and the age, condition, and resources of each party. That included an undisputed finding that Oksana was earning considerably more in annual income than Greg was at the time of dissolution.

We hold that the trial court did not abuse its discretion in declining to award Oksana spousal maintenance.

#### IV. Division of Property

Oksana argues that distribution of property was not just and equitable. We review an order distributing property for an abuse of discretion, and will only reverse a trial court’s decision if there is a manifest abuse of discretion. In re Marriage of Kraft, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). In a dissolution action, all property, community and separate, is before the court for distribution. In re Marriage of Stachofsky, 90 Wn. App. 135, 142, 951 P.2d 346 (1998). The relevant factors in determining a just and equitable distribution of property are provided by statute. They include (1) the nature and extent of community property, (2) the nature and extent of 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. RCW 26.09.080.

Here, the trial court’s stated goal, in light of the short duration of the marriage, was “to place each party in approximately the same position that he or

she would be in had this marriage not occurred.” This was appropriate. The court awarded Greg all of his separate property and a disproportionate amount of their community property. Oksana argues that the trial court erred by not dividing the assets more equally. But, she presents no evidence in support of this assertion, nor does she demonstrate a manifest abuse of discretion by the trial court.

As the trial court pointed out in its findings, Oksana’s petition for dissolution sought no award of Greg’s separate estate. For the first time at trial, Oksana changed her stance and asserted that the court should follow “a strict and proper 50/50 division” of all the assets, including Greg’s separate property. But, she did not demonstrate why such a division was fair and just. Here, the marriage was short and Oksana’s ability to support herself had actually improved over the course of the marriage, based in large part on Greg’s willingness to relocate during the marriage to accommodate her job prospects. See, e.g., In re Marriage of Fiorito, 112 Wn. App. 657, 669, 50 P.3d 298 (2002) (affirming a trial court’s decision to award a wealthier husband all of his separate property, based on the fact that “[t]he marriage was short-lived and did not affect Ms. Fiorito’s ability to support herself.”). The court acted within its discretion by awarding Greg all of his separate assets.

Similarly, the trial court did not abuse its discretion by awarding Greg the majority of the community property. The trial court’s findings reflect that it considered all of the factors in RCW 26.09.080, including the nature and extent of all property before it, community and separate alike, the short duration of the

marriage, and Greg and Oksana's circumstances at the time of trial. And, Greg points to several cases where Washington courts have affirmed an award of a greater portion of the total estate to a spouse who has greater separate property. See, e.g., In re Marriage of Brewer, 137 Wn.2d 756, 760, 976 P.2d 102 (1999); In re Marriage of DewBerry, 115 Wn. App. 351, 356, 358, 366, 62 P.3d 525 (2003). Here, the trial court noted that Oksana was younger and earned greater income than Greg at the time of dissolution. It also made particular note of its finding that the couple depleted a large amount of Greg's separate property liquid assets over the course of the marriage. The trial court found that Oksana "had no separate resources to deplete so the only way the husband's financial position which he had prior to this marriage could be replaced would be to award him all community assets." While it was ultimately impossible to return the parties to their economic condition prior to the marriage, the court was entitled to weigh these factors as it did. The trial court did not abuse its discretion in making the division of property.

#### V. Evidentiary Ruling Excluding Testimony

Oksana next argues that the trial court erred by refusing to admit testimony about Greg's "personal foibles" and alleged drug use. We review a trial court's evidentiary rulings for an abuse of discretion. City of Kennewick v. Day, 142 Wn.2d 1, 5, 11 P.3d 304 (2000). A manifest abuse of discretion occurs when the discretion was exercised on untenable grounds. In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

At trial, Oksana's counsel sought to elicit testimony from her 19 year old

daughter, Vasylchenko, about Greg's alleged use of marijuana, cocaine, and alcohol. The trial court allowed Vasylchenko to testify that she witnessed Greg drinking beer constantly and that she smelled marijuana smoke in his car, though she never witnessed him smoking it. She also testified that she never saw Greg using cocaine. While allowing some testimony on this subject, the trial court also sustained several objections by Greg's counsel. For example, Oksana's counsel asked Vasylchenko if Greg ever asked her to come and pick him up at a bar. Greg's counsel objected based on relevance, and the trial court responded: "Now, we're establishing that he got somebody to drive for him when he was under the influence. How does that show dissipation of assets? . . . I'll sustain the objection. I don't think that's relevant."

Oksana states that the court "incorrectly sustained various objections." But, she does not present any argument in support of her assertion. There was no evidence at trial to link Greg's alleged drug use with any dissipation of assets. Nor was there any evidence that Vasylchenko had any personal knowledge of her parents' assets or how Greg's drug use may have impacted them. When Vasylchenko was asked if she knew anything about the family finances, her only response was: "I know that [INAUDIBLE] wants to pay his rent and health insurance." (Alteration in original.)

Under RCW 26.09.080, a trial court must distribute the marital estate "without regard to misconduct." While a court may consider gross fiscal improvidence and the squandering of marital assets, it may not consider immoral or physically abusive conduct. In re Marriage of Steadman, 63 Wn. App. 523,

528, 821 P.2d 59 (1991). Oksana has not provided any evidence that Greg's alleged personal foibles or drug use had any impact on their assets. We hold that the trial court properly sustained objections based on relevance and did not abuse its discretion.

Oksana also asserts that Greg "was a recalcitrant and uncooperative witness who not only clearly committed perjury at certain p[oints] but who was allowed by the Judge below to get away with such evasiveness, time-wasting, and refusal to answer relevant questions." Trial courts have wide discretion in managing their courtrooms and conducting trials fairly, expeditiously, and impartially. In re Marriage of Zigler, 154 Wn. App. 803, 815, 226 P.3d 202, review denied, 169 Wn.2d 1015, 236 P.3d 895 (2010). We review a judge's courtroom management decisions for abuse of discretion. Id.

The record here shows that, despite acrimony and argumentative questioning between Oksana's counsel and Greg, the trial court adeptly managed the trial, sustained objections where appropriate, and interjected as required. For example, there were several instances where the court instructed Greg to answer questions that were relevant, or commenced with its own questioning. We hold that the trial court properly exercised its discretionary authority in managing the trial.

#### VI. Attorney Fees

Finally, Oksana argues that the trial court erred by awarding Greg attorney fees based on her intransigence. The court entered judgment in Greg's favor for \$8400 in attorney fees and \$261 in costs. A trial court has

discretionary authority to order an award of attorney fees based on one party's intransigence during the proceeding. In re Marriage of Crosetto, 82 Wn. App. 545, 563, 918 P.2d 954 (1996). The party challenging the trial court's decision bears the burden of proving that the trial court exercised its discretion in a way that was clearly untenable or manifestly unreasonable. Id.

Here, the trial court entered substantial findings of fact to support its award of attorney fees and costs. The court found, for example, that Oksana's counsel twice forced the rescheduling of trial, first by requesting a continuance on the day trial was originally scheduled and then by failing to make arrangements for an interpreter in advance of trial. The court found that Oksana unnecessarily commenced a second divorce action in North Carolina, requiring Greg to obtain a separate attorney in that state. The court also found that Oksana failed to provide complete financial records, requiring Greg to subpoena those records. Each of these actions created additional and unnecessary attorney costs and fees.

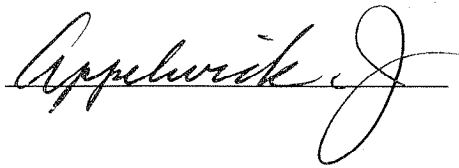
Oksana has not challenged any of these findings of fact on appeal. They are thus verities on appeal. Eriksen, 170 Wn.2d at 215 n.4. Without disputing these factual bases for the trial court's award of attorney fees, Oksana has failed to meet her burden of demonstrating that the court abused its discretion in granting the award.

Greg also requests attorney fees on appeal, based on RAP 18.9(a) and 18.1, arguing that Oksana's appeal is frivolous. An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no

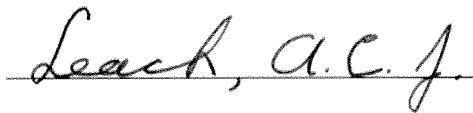
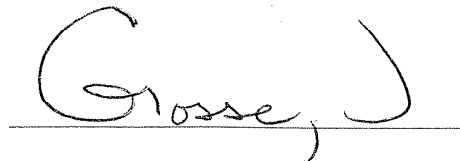
debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal. Kinney v. Cook, 150 Wn. App. 187, 195, 208 P.3d 1 (2009).

Greg has pointed out that Oksana's counsel has in several places cited to and relied upon exhibits that the trial court expressly rejected at trial. We also note that at the time of this appeal, Oksana's counsel is suspended from the practice of law in Washington. But, while we find the arguments in Oksana's brief to be largely without merit, we decline to hold that the appeal is frivolous under RAP 18.9. Accordingly, we decline to award Greg attorney fees on appeal.

We affirm.

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WE CONCUR:

A handwritten signature in cursive script, reading "Leach, A.C.J.", written over a horizontal line.A handwritten signature in cursive script, reading "Grosse, J.", written over a horizontal line.

