

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)	No. 65512-4-I
PAUL MUDROVICH ,)	
)	DIVISION ONE
Respondent,)	
)	UNPUBLISHED OPINION
and)	
)	
BARBARA MUDROVICH,)	FILED: January 17, 2012
)	
Appellant.)	
)	
_____)	

Appelwick, J. — Barbara Mudrovich appeals the trial court’s orders dissolving her marriage to Paul Mudrovich and providing for the care and support of their children. Because Barbara fails to demonstrate any error or abuse of discretion in the orders on review before this court, we affirm. We also deny Paul’s request for attorney fees on appeal.

FACTS

Paul and Barbara married in June 1988 and separated in July 2008. The couple had four children during the marriage. Paul filed a petition for dissolution in September 2008. The trial court heard evidence and argument at trial in October and November 2009. On May 5, 2010, the trial court entered findings of fact and conclusions of law, a decree of dissolution, a parenting plan, and an

order of child support. Barbara filed a timely appeal of these orders on June 4, 2010.

Later in 2010, the parties experienced ongoing conflict and appeared repeatedly before the trial court for contempt and enforcement proceedings. At some point late in 2010, Barbara, who was no longer represented by counsel, asked the trial court to allow an advocate to assist her in court hearings as an accommodation under the Americans with Disabilities Act (ADA). In December 2010, the trial court entered written findings of fact and an order allowing the advocate, who was not an attorney, to assist Barbara at hearings but restricting him from addressing the court. Barbara filed a motion for reconsideration and the advocate filed a notice of appearance. In an order filed January 19, 2011, the trial court denied reconsideration as untimely and imposed CR 11 sanctions on the advocate.

ANALYSIS

Our consideration of Barbara's claims is controlled by well-settled principles of appellate review. Our review is limited to orders properly before us based on a timely notice of appeal. RAP 5.2(a). We consider only the evidence that was before the trial court at the time a decision was made. See RAP 9.1; RAP 9.11. This is because "[t]he function of ultimate fact finding is exclusively vested in the trial court." Ewards v. Morrison-Knudsen Co., 61 Wn.2d 593, 598, 379 P.2d 735 (1963). We do not weigh conflicting evidence or substitute our judgment for that of the trial court. In re Marriage of Rich, 80 Wn. App. 252, 259,

907 P.2d 1234 (1996). The trial court is the judge of credibility of witnesses and we review challenged findings of fact only for substantial evidence in the record before the trial court. See Dodd v. Polack, 63 Wn.2d 828, 829, 389 P.2d 289 (1964). Unchallenged findings are verities on appeal. In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999). This court generally will not consider claims not supported by citation to authority, references to the record, or meaningful analysis. RAP 10.3(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

In this appeal, Barbara lists five assignments of error but has not assigned error to any finding of fact or any conclusion of law or any particular provision of any order designated in her notice of appeal. She claims that events occurring in the trial court after entry of the orders on appeal justify a new trial. The majority of her factual assertions are not supported by references to the record. The majority of her arguments are not supported by citation to relevant authority or meaningful argument. The deficiencies in Barbara's briefing are sufficient to preclude review. Nevertheless, to the extent possible, we have addressed the essence of her claims.

Barbara first contends that the trial court violated the ADA by refusing to grant her request for a reasonable accommodation. She claims that the alleged violations of the ADA are "sufficient to set aside the Decree of Dissolution with instructions for retrial." But, Barbara fails to identify in the record any such

request before the May 5, 2010 entry of the orders on appeal. It appears that Barbara was represented by counsel at trial and did not request permission to be assisted in court by a special advocate until months later. Barbara did not designate any later orders in her notice of appeal and does not argue or demonstrate that any such order would be properly addressed in this appeal. And, Barbara fails to identify any authority for her theory that the dissolution decree should be set aside based on her dissatisfaction with the trial court's response to her accommodation requests months later.

Barbara next claims that the trial court "failed in its gatekeeper function." Without citation to authority or coherent argument, Barbara claims the trial court erred by (1) failing to recognize that her attorney "was obviously unprepared for trial" and to order a continuance; (2) failing "to take note of serious inconsistencies in Paul's testimony;" (3) allowing Paul and his attorney to take advantage of Barbara's disability and deliberately trigger her symptoms; and (4) refusing to admit evidence of Paul's anger management problem.

Barbara fails to establish that the trial court was required to order a continuance when neither she nor her attorney requested one. Regarding Paul's testimony, Barbara contends that the trial court failed to recognize that Paul committed perjury by stating that he had his college degree before the couple married in June 1988, when in fact he did not receive his degree until April 1989. She also claims that Paul provided false or misleading testimony regarding his work history and her desire to have both a career and children.

But, Barbara did not object to Paul's testimony on these issues at trial, she has not challenged any finding of fact on appeal, and her speculations regarding perjury or misleading testimony do not provide a basis for this court to question the trial court's credibility determinations. And, Barbara fails to provide any reference to the record to support her claim that Paul and his attorney deliberately provoked her or took advantage of her disability. As to Paul's alleged anger management problem, Barbara refers only to portions of Paul's testimony to which she did not object and claims that his testimony was misleading or incomplete. Barbara fails to identify any evidence excluded by the trial court. Under these circumstances, Barbara's claim of error in the "gatekeeper function" fails.

Thirdly, Barbara contends that she received inadequate representation of counsel when (1) her attorney withdrew two weeks prior to trial; (2) her attorney had consented to "a number of actions and agreements" not in her interest and without her knowledge; and (3) the parenting plan and financial settlements were entered without her consent and without her or her attorney's signature. The cases Barbara cites are inapposite. See Graves v. P.J. Taggares Co., 94 Wn.2d 298, 305, 616 P.2d 1223 (1980) (withdrawal of jury demand and stipulations on vicarious liability and plaintiff's injuries were invalid where defendant's attorney did not advise or obtain consent of client); Morgan v. Burks, 17 Wn. App. 193, 200, 563 P.2d 1260 (1977) (stipulated settlement of personal injury claim properly vacated where plaintiffs did not understand or consent to settlement).

Barbara was represented at trial by counsel. Her counsel questioned witnesses, presented evidence and argument, and submitted a posttrial memorandum. Barbara fails to specify any action taken by counsel without her knowledge or against her interest. The property division and parenting plan were ordered by the court after trial, based on written findings of fact and conclusions of law. The orders did not result from any settlement and do not require signatures by Barbara or her attorney to be valid.

Next, Barbara contends that the trial court's division of property was inequitable. In particular, Barbara claims that the trial court erred by (1) characterizing her retirement funds as community property; (2) assigning Barbara nine times more of the couple's liabilities; (3) failing to consider Barbara's limited ability to work given her disabling conditions; and (4) failing to compensate her for supporting Paul while he finished school.

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 trial court's characterization of property as community or separate is a question of law that we review de novo. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). 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). 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. The trial court is in the best position to determine what is “fair, just and equitable” under the circumstances. Brewer, 137 Wn.2d at 769 (quotation mark omitted).

Contrary to her claim that her federal retirement funds are wholly separate property, where a pension is accumulated partly prior to marriage and partly after marriage, it is proportionately classified, with the portion acquired during marriage characterized as community property. See In re Marriage of Landry, 103 Wn.2d 807, 699 P.2d 214 (1985). Generally, the community share is calculated by dividing the number of years of marriage prior to separation by the total number of years of service for which pension rights were earned and multiplying the results by the monthly benefit at retirement. In re Marriage of Bulicek, 59 Wn. App. 630, 636-37, 800 P.2d 394 (1990). Because the trial court specifically ordered calculation of the community share of Barbara’s federal employees retirement system defined benefit plan by this formula, she fails to demonstrate error.

Although Barbara complains about the total amount of liabilities allocated to her, she fails to acknowledge that the trial court awarded more community assets to her, including the family home, and that she incurred more separate debt than Paul. As Paul points out, Barbara received a total of \$240,305.50 in

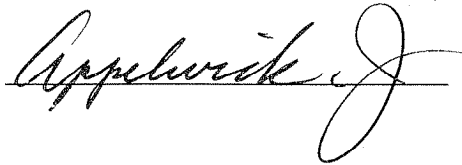
community assets less community debts, while Paul received a net value of \$226,605.95. Similarly, Barbara fails to acknowledge that Paul completed his education within the first year of the couple's twenty year marriage, giving the community ample time to realize the financial benefit resulting from his professional degree. Cf. In re Marriage of Washburn, 101 Wn.2d 168, 170-71, 677 P.2d 152 (1984) (reversing and remanding property division where trial court failed to consider wife's contribution to husband's professional education during eight of the couple's ten years of marriage). Finally, the parties presented extensive evidence of their work and earning history. Barbara provides no support in the record for her speculation that the trial court failed to properly consider her health or employment. Barbara fails to demonstrate any abuse of discretion in the division of property.

In her final assignment of error, Barbara claims that the trial court's child support allocation is inequitable. Without reference to the record, Barbara claims that the child support order requires Paul to pay one quarter of the children's expenses while she is left to pay three quarters. We review a child support order for abuse of discretion. In re Marriage of Bell, 101 Wn. App. 366, 371-72, 4 P.3d 849 (2000). The trial court calculated Paul's monthly net income as \$5,551.35 and Barbara's as \$7,665.71. The trial court deviated from the standard calculation of \$1,324.26, ordering Paul to pay \$1,500.00 per month. The court also ordered Paul to pay 42 percent and Barbara to pay 58 percent of expenses incurred in "Agreed Upon Extracurricular Activities." The order also

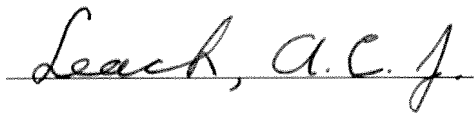
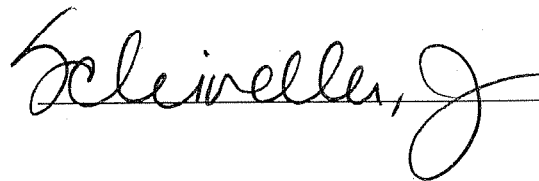
requires Paul to provide health insurance for the children and to pay 45 percent of uninsured medical expenses. Barbara fails to demonstrate any abuse of discretion in the child support order.

Finally, Paul requests attorney fees on appeal under RAP 18.1 and RCW 26.09.140. In light of the trial court's decision to award no attorney fees and given Paul's failure to claim or demonstrate that he has the financial need and Barbara the ability to pay, we exercise our discretion and deny his request for attorney fees.

Affirmed.

A handwritten signature in cursive script, appearing to read "Appelwick, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Leach, A.C. J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Schweidler, J.", written over a horizontal line.