

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

In the Matter of the Marriage of )  
 )  
CALLY MARIE SIMPSON, ) No. 65712-7-1  
 )  
 ) DIVISION ONE  
 Respondent, )  
 ) UNPUBLISHED OPINION  
 )  
 and )  
 )  
JEFFREY TODD SIMPSON, )  
 )  
 )  
 Appellant. ) FILED: September 19, 2011

GROSSE, J. — A trial court has discretion to assess the reliability and sufficiency of evidence provided in awarding property in dissolution proceedings. Jeffrey Simpson appeals the trial court’s distribution of property in the dissolution of his three year marriage to Cally Simpson, as well as its award of attorney fees. Because the trial court’s distribution of property and award of attorney fees are amply supported by the record, we affirm.

**FACTS**

Cally and Jeffrey were married on October 14, 2006. In April 2009, they separated after less than three years of marriage. The Simpsons had no children from the marriage. On June 14, 2010, the trial court conducted a bench trial on the dissolution proceeding. The trial court considered the parties’ assets, including real property, personal property (jewelry and prior separate property), debts and request for attorney fees. The court awarded each party their separate property in their possession. Additionally, the court awarded specific personal property to the parties, ordering each to make those items available to the other party. The court awarded

Cally one half of her attorney fees and required Jeffrey to return jewelry to Cally or pay her its value.

Jeffrey appeals.

### ANALYSIS

In a dissolution action, all property, both community and separate, is before the court for distribution.<sup>1</sup> When distributing the property, the court considers, among other factors: (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 the parties.<sup>2</sup> The court has broad discretion to award all the property brought before it in a just and equitable fashion, and will be reversed only upon a showing of manifest abuse of discretion.<sup>3</sup> A manifest abuse of discretion occurs when the court bases its decision on untenable grounds.<sup>4</sup>

Jeffrey challenges the property distribution award, contending that the court failed to consider all his separate property when it specified personal property items that Cally was required to return to him. The trial court awarded Jeffrey “[a]ny property taken from the residence and in his possession, except that property awarded to Wife in this Decree.” Additionally, the court awarded Jeffrey specific items that were still in the home where Cally was now residing. Cally returned all of those specified items to Jeffrey. Jeffrey now claims there was additional property of his, but he does not state what that property is. At trial, the court heard testimony regarding personal property

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<sup>1</sup> In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

<sup>2</sup> RCW 26.09.080.

<sup>3</sup> Brewer v. Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999).

<sup>4</sup> In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

and specifically awarded all that was before it. The court did not abuse its discretion.

Next, Jeffrey argues that the trial court erred in establishing the amount of attorney fees it awarded. He does not contest the award of attorney fees or that the amount is excessive. He contends only that the court erred in calculating the amount of those fees. Cally submitted an attorney fee declaration showing that up to the time of trial she had accumulated attorney fees of \$5,095. Cally also testified that she had paid a previous attorney \$3,000. The court inquired of counsel whether the declaration included fees for the trial. Counsel responded that there was an additional \$2,500 for the one day trial. Ample evidence supported the trial court's conclusion that the amount of attorney fees paid by Cally amounted to \$10,595.

Finally, Jeffrey contends that the court erred in requiring him to return jewelry or pay its monetary value to Cally. Jeffrey does not dispute that the jewelry should have been awarded to Cally, only that he is not in possession of the jewelry. The court found that the jewelry was in Jeffrey's possession. Findings of fact are reviewed under the substantial evidence standard.<sup>5</sup> Substantial evidence exists when there is a sufficient quantum to persuade a fair-minded person of the truth of the declared premise.<sup>6</sup> Here, the court relied on Cally's testimony that the jewelry was in Jeffrey's possession. To support her testimony, Cally admitted a document showing that her wedding ring had been inspected by the jewelry store in accordance with the warranty. That document had been submitted to the court by Jeffrey. Cally testified that Jeffrey had taken the jewelry in for the warranty inspection, thus proving that he had the jewelry in his

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<sup>5</sup> Willener v. Sweeting, 107 Wn.2d 388, 393, 730 P.2d 45 (1986).

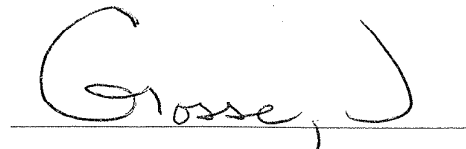
<sup>6</sup> Ridgeview Props. v. Starbuck, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982).

possession. Jeffrey objected to the admission of the document as proof of possession. The court agreed that the document itself did not prove Jeffrey was in possession of the jewelry, but admitted the document and informed Jeffrey that he could ask questions about the document. Jeffrey did not pose any questions to Cally. He only argued at the end of trial that he did not possess the jewelry. The court relied on Cally's testimony.

We review trial court findings for substantial evidence in the record; we do not weigh the evidence or determine the credibility of witnesses.<sup>7</sup> The evidence here permitted the inferences that the trial court drew and its conclusion that Jeffrey was in possession of the jewelry.

Cally requests attorney fees on appeal pursuant to RCW 26.09.140. In an appeal from a decree of dissolution, "[t]he appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs." RCW 26.09.140. An award of attorney fees on appeal from a decree of dissolution is determined by economic need and ability to pay.<sup>8</sup> Here, there has not been an adequate showing of need. The request for attorney fees is denied.

The trial court is affirmed.

A handwritten signature in black ink, appearing to read "Grosse, J.", is written over a horizontal line.

<sup>7</sup> In re A.V.D., 62 Wn. App. 562, 568, 815 P.2d 277 (1991). Jeffrey cites RCW 26.16.210 and WAC 466-30-050 as support for subjecting Cally to a greater burden of proof. But neither the statute nor the rule apply in this instance.

<sup>8</sup> In re Marriage of Terry, 79 Wn. App. 866, 871, 905 P.2d 935 (1995).

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WE CONCUR:

*Appelwick, J.*

*Leach, A.C.J.*