

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)	NO. 65739-9-1
)	
FORD B. SMITH,)	DIVISION ONE
Respondent,)	
)	
and)	UNPUBLISHED OPINION
)	
FAITH L. SMITH (a/k/a TAN),)	
)	
Appellant.)	FILED: August 20, 2012
)	

Leach, C.J. — Ford and Faith Smith cross appeal a decree dissolving their marriage. Faith contends that the trial court failed to distribute the property in a just and equitable manner and awarded her inadequate maintenance. Both parties claim entitlement to attorney fees at trial and on appeal. Finding no abuse of discretion, we affirm the dissolution decree and deny the attorney fee requests.

FACTS

Ford and Faith separated in 2007 after an 11-year marriage.¹ At the time of trial, Ford was 62 years old and Faith was 65. Both have medical issues that prevent them from working.

When the parties married, Faith owned a house located in Northridge,

¹ We use the parties' first names to avoid confusion. We intend no disrespect.

California. Three months after the marriage, Ford paid off the mortgage on the Northridge house. Faith signed a quitclaim deed transferring title from herself to “Faith L. Tan and Ford Smith, husband and wife, as joint tenants.”² Ford and Faith lived in the Northridge house for four years after they married.

In 2000, Ford and Faith moved to an apartment in Bellingham, Washington. While the parties lived in Washington, Faith spent every other month in California visiting her family. She also spent long periods of time in the Philippines, where she was born. In 2002, Faith decided she wanted to build a house in the Philippines. The parties signed a “loan agreement” in which Ford agreed to loan Faith \$167,000 from their home equity line of credit. Faith agreed to repay Ford \$1,000 a month.

In 2006, Faith moved back to California, where she lived for the rest of the marriage. Ford remained in Washington. On May 11, 2007, Ford filed a petition for dissolution. A court commissioner entered a temporary order requiring Ford to pay Faith \$3,500 in monthly maintenance, which was similar to the amount Ford regularly gave Faith during the marriage.³

During discovery, Faith refused to provide an accounting showing how

² The mortgage had a remaining balance of \$189,145.54.

³ During the marriage, Ford gave Faith \$3,000 a month: \$1,000 as an allowance, \$1,000 in credit card charges, and \$1,000 as “petty cash.”

she used the \$167,000 she withdrew from the home equity line of credit.⁴ As a sanction, the trial court terminated her temporary maintenance award on January 1, 2009. Even so, Ford paid Faith approximately \$48,000 after the temporary maintenance terminated so that she could meet her needs. According to Faith, she acquired \$70,000 in credit card debt after the court terminated the temporary maintenance because she “had nothing to live on.”

The main issues at trial were property distribution and maintenance. Each month, Ford receives a \$123 disability pension from the Veteran’s Administration. Ford also owns a nearly 38 percent interest in the Robert and Meta Smith Family Limited Partnership, which owns land in SeaTac burdened by a long-term ground lease to the Doubletree Inn.⁵ His interest in the partnership generates approximately \$11,353 a month, from which he receives a net distribution of \$8,800. Additionally, Ford owns a house in SeaTac jointly with his sister.⁶ Ford’s father lives in the house and pays his children monthly rent. The expenses for the house, however, exceed the rental income.⁷ Each month, Faith

⁴ At trial, Ford contended that Faith used the money to support her sons and grandson, unbeknownst to him. To support this claim, he produced a letter Faith wrote to her son’s divorce attorney in which she claims she paid for her son and his wife’s living expenses during their marriage.

⁵ Between 1989 and 1996, Ford’s parents gifted or sold units in the partnership to his sister and him.

⁶ Ford’s father previously owned the house, which he transferred into a qualified personal residence trust in 1996. The trust terminated in 2003, and the house was transferred in equal shares to Ford and his sister in 2008.

⁷ For example, Ford’s 2009 tax returns show that there was a net loss of

receives \$765 from the Social Security Administration. She also has an IRA (individual retirement account) worth about \$167,000. Faith sought a permanent maintenance award of \$6,000 monthly in addition to a lump sum payment of \$4,000,000.

During trial, Faith attempted to introduce records from the King County assessor to prove the value of the partnership and SeaTac properties. Neither party had attempted to assign a value to either parcel pretrial. The trial court excluded both documents, explaining that the parties should have valued the properties earlier. Ford testified during trial that he did not know the value of the partnership land or the SeaTac house.

In June 2010, the trial court entered findings of fact and conclusions of law and entered a decree dissolving the Smiths' marriage. The trial court awarded each party his or her own separate property and equally divided the community property. The trial court characterized the Northridge house as community property and ordered it sold. The proceeds were to be split equally with \$167,000 of Faith's share going to Ford to pay off the loan. The trial court characterized Ford's interest in the partnership and the SeaTac house as Ford's separate property and awarded it entirely to him. While the trial court valued Ford's interest in the partnership at \$837,651,⁸ it did not assign a value to the \$488 on the SeaTac home that year.

⁸ This is the number of shares (929) multiplied by the value of each unit

SeaTac property. The trial court ordered Ford to pay Faith \$3,000 maintenance per month for two years, finding,

The Court finds that a limited amount of spousal maintenance for a definite period in light of that already provided by the husband is appropriate in this case so that Faith Smith can transition to her admitted stated desire of living in Cebu, Philippines where she has a house and the cost of living is substantially lower. Therefore, the Court finds that Faith Smith should be awarded and Ford Smith should pay spousal maintenance to her in the amount of \$3000 a month for two years starting the first day of the month after the decree of dissolution is entered.

The decree required each party to be responsible for his or her own attorney fees.

Faith moved to reopen testimony on the values of the partnership land and the SeaTac house. The trial court denied Faith's motion. Faith appeals. Ford cross appeals the denial of attorney fees.

ANALYSIS

Property Distribution

Faith contends the trial court made an inequitable property distribution. Ford asserts that we should limit our review of Faith's claim because she failed to follow RAP 10.3(g). RAP 10.3(g) requires a separate assignment of error for each finding of fact a party contends was improperly made, with a reference to

(\$901.67).

each finding by number. While Faith failed to assign error to each finding separately, “[a] technical violation of the rules will not ordinarily bar appellate review where justice is to be served.”⁹ We review the merits of an appeal when the appellate brief sets forth the challenged ruling and the nature of the challenge is “perfectly clear.”¹⁰ Faith has made it perfectly clear which findings of fact she challenges. Therefore, we turn to the merits.

Faith claims the trial court erred by (1) failing to assign a value to Ford's interest in the partnership and SeaTac properties and (2) failing to properly consider the economic circumstances in which the decree left her. We disagree.

In a dissolution action, the court has before it for distribution all property, community and separate.¹¹ The trial court is in the best position to determine what is fair under the circumstances, and we will reverse a trial court's distribution of property only if there is a manifest abuse of discretion.¹² The relevant factors in determining a just and equitable property distribution include (1) the nature and extent of the community and separate property, (2) the duration of the marriage, and (3) the economic circumstances of each spouse at

⁹ Goehle v. Fred Hutchinson Cancer Research Ctr., 100 Wn. App. 609, 613, 1 P.3d 579 (2000).

¹⁰ Goehle, 100 Wn. App. at 614.

¹¹ In re Marriage of Stachofsky, 90 Wn. App. 135, 142, 951 P.2d 346 (1998).

¹² In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999) (citing In re Marriage of Konzen, 103 Wn.2d 470, 477-78, 693 P.2d 97 (1985)).

the time the division of the property becomes effective.¹³

“The valuation of property in a divorce case is a material fact.”¹⁴ A trial court must assign values to the property awarded to create a record for appellate review.¹⁵ We may make a valuation based on the record if the trial court fails to do so.¹⁶ Only if the failure to assign value to a major asset renders our review impossible is remand appropriate.¹⁷ Where the trial court’s valuation is clear on the record, we will not find an abuse of discretion if the assigned value lies within the scope of the evidence.¹⁸

The trial court here valued Ford’s interest in the partnership at \$837,651. It arrived at this value by multiplying the total number of partnership shares owned by Ford by the price per partnership share Ford paid for his most recent purchase. Faith failed to introduce evidence of any other value. Thus, substantial evidence supports the trial court’s finding.

Faith challenges the sufficiency of the trial court’s valuation because the trial court did not consider the worth of the land on which the Doubletree Inn sits. This claim fails for two reasons. First, a partnership is a distinct entity,¹⁹ and

¹³ RCW 26.09.080.

¹⁴ In re Marriage of Greene, 97 Wn. App. 708, 712, 986 P.2d 144 (1999).

¹⁵ Greene, 97 Wn. App. at 712.

¹⁶ Greene, 97 Wn. App. at 712.

¹⁷ Greene, 97 Wn. App. at 712.

¹⁸ In re Marriage of Soriano, 31 Wn. App. 432, 435, 643 P.2d 450 (1982).

¹⁹ RCW 25.05.050

partnership property is not the property of partners individually.²⁰ The court properly valued the partnership interest instead of the land. Second, because a long-term lease to Doubletree²¹ encumbers the land, the unencumbered value of the land does not accurately reflect its current value. Instead, the cash flow from the lease more accurately reflects the current value of the land. Therefore, failing to assign a specific value to the land did not render the trial court's distribution unjust. Faith has not demonstrated that the trial court abused its discretion with regard to the partnership property.

Neither did the trial court abuse its discretion by failing to value the SeaTac property.²² Faith disagrees, relying on Wold v. Wold.²³ In Wold, we reversed a property award where the trial court assigned values to only 3 of 15 items of community property.²⁴ We could not discern the values of the other property from the record and therefore could not undertake appellate review.²⁵ Because the trial court judge had died in the interim, making remand impossible, we reversed the dissolution decree.²⁶

We easily distinguish Wold from this case. In Wold, the trial court did not

²⁰ RCW 25.05.060.

²¹ Ford testified that the ground lease expires in either 2044 or 2048.

²² The trial court listed the property's value as "unknown."

²³ 7 Wn. App. 872, 503 P.2d 118 (1972).

²⁴ Wold, 7 Wn. App. at 873-74, 878.

²⁵ Wold, 7 Wn. App. at 874.

²⁶ Wold, 7 Wn. App. at 877 ("Where the trial court judge who entered deficient findings is no longer on the bench, the only recourse is a new trial.").

assign value to virtually all the community property. Here, in contrast, the court did not value only one item of separate property. Additionally, the trial court's failure to value the SeaTac property has not made appellate review impossible. Evidence in the record establishes that Ford and his sister each own a one-half interest in the house but that Ford's father currently occupies the house and pays rent of \$900 per month. The record also establishes that the amount of rent is insufficient to cover expenses on the house. Thus, the SeaTac property generates no income for Ford. Because this evidence allows us to determine whether the property distribution was just and equitable despite the fact that the trial court did not assign a dollar value to the SeaTac property, Wold does not require reversal (or remand) in this case.

Finally, Faith claims that the property distribution is unfair because it leaves the parties in disparate economic circumstances. We disagree. Here, the trial court awarded each party his or her separate property and then provided for an equal division of the community property. Faith seems to assert that because the Northridge house had been her separate property, it was improper to order it sold and the proceeds equally divided. However, Faith does not challenge the trial court's classification of the Northridge house as community property. Given Ford's significant investment in the house, we cannot say that no reasonable trial court would have divided the property as the one here did.

RCW 26.09.080(4) requires that the trial court consider the economic circumstances of each party at the time of distribution. We find no evidence that the court disregarded Faith's economic circumstances. Rather, the record demonstrates the trial court properly considered the relevant factors in its property division. The trial court did not abuse its discretion simply because Ford's total award is greater than Faith's due to his separate property. Because the property distribution was fair and equitable, Faith's claims fail.

Maintenance Award

Faith claims that the trial court awarded her inadequate maintenance based on her standard of living during the marriage and her current financial resources. Essentially, she contends that Ford should pay more maintenance because he can. We disagree.

A trial court has broad discretion in awarding maintenance, and we will not reverse an award of maintenance unless the trial court abused that discretion.²⁷ The only limitation on the amount and duration of maintenance is that the award be just.²⁸ The relevant statutory factors a court must consider include (1) the financial resources of the party seeking maintenance; (2) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of

²⁷ In re Marriage of Bulicek, 59 Wn. App. 630, 633, 800 P.2d 394 (1990).

²⁸ RCW 26.09.090(1); Bulicek, 59 Wn. App. at 633.

life, and other attendant circumstances; (3) the standard of living established during the marriage; (4) the duration of the marriage; (5) the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and (6) the ability of the spouse from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse seeking maintenance.²⁹

No uniform standard exists for determining the proper duration of a maintenance award. Generally, the longer the marriage, the more likely a court will grant maintenance for a longer period.³⁰ The purpose of spousal maintenance is to support a spouse until he or she has become self-supporting.³¹ Accordingly, a permanent award of maintenance is neither required nor favored. One spouse “should not be given a perpetual lien on the other spouse's future income.”³²

Here, Faith presented evidence that Ford has the ability to pay, but she has made no showing that she will not be able to meet her financial needs once the maintenance period ends. The trial court determined that the maintenance

²⁹ RCW 26.09.090.

³⁰ See, e.g., In re Marriage of Sheffer, 60 Wn. App. 51, 56-58, 802 P.2d 817 (1990) (holding three-year maintenance award insufficient in case involving a 30-year marriage where recipient spouse sacrificed employment to raise family).

³¹ In re Marriage of Irwin, 64 Wn. App. 38, 55, 822 P.2d 797 (1992).

³² Sheffer, 60 Wn. App at 54.

award would allow Faith enough time to move to the Philippines as planned, where she has a house and the cost of living is much lower than that in the United States. The trial court based this determination on a sample budget introduced into evidence by Ford. Faith has not challenged the accuracy of that evidence. Additionally, the court also considered the fact that Ford paid Faith \$48,000 in voluntary maintenance after his obligation to pay temporary maintenance ended. The court considered the statutory factors and appropriately exercised its discretion.

Faith relies on In re Marriage of Sheffer.³³ There, the wife forfeited her own economic opportunities to help foster her husband's career and care for the family at home.³⁴ Because the record did not demonstrate that the trial court had properly considered the standard of living of the parties during marriage or the parties' postdissolution economic condition, we reversed the trial court's maintenance award of \$1,200 per month for three years.³⁵ We stated, "[M]aintenance should be utilized in this case as a flexible tool to more nearly equalize the postdissolution standard of living of the parties, where the marriage is long term and the superior earning capacity of one spouse is one of the few assets of the community."³⁶

³³ 60 Wn. App. 51, 802 P.2d 817 (1990).

³⁴ Sheffer, 60 Wn. App. at 57.

³⁵ Sheffer, 60 Wn. App. at 57-58.

³⁶ Sheffer, 60 Wn. App. at 57.

This case is not similar to Sheffer. In Sheffer, the parties were married 30 years, during which time the wife quit her job to raise their children. In contrast, the parties here had a midrange marriage, which they entered into later in life. Faith did not make personal economic sacrifices on behalf of the marriage. Faith and Ford have no children together. At the time of the marriage, Faith was unemployed, and she remained so during the marriage. Unlike the wife in Sheffer, Faith did not contribute her resources and efforts toward helping Ford achieve economic success. Based on these considerations, Sheffer does not aid Faith in her argument that the trial court did not properly consider the economic condition in which the award would leave her.

In its findings of fact and conclusions of law, the trial court thoroughly and properly considered each of the factors outlined in RCW 26.09.090 and made a just determination regarding maintenance. The trial court did not abuse its discretion by awarding Faith monthly spousal maintenance of \$3,000 for two years.

Attorney Fees

The trial court ordered both parties to pay his or her own attorney fees. We will reverse a trial court's decision not to award fees under RCW 26.09.140 only if the trial court abused its discretion.³⁷ A court, after considering the

financial resources of both parties, may order one party to pay the other party's reasonable attorney fees associated with maintaining or defending a proceeding under chapter 26.09 RCW.³⁸ Faith claims entitlement based upon financial need. Faith fails to support her argument with citation to statute or authority. Because Faith did not properly brief the issue, we decline to consider it.³⁹

Ford claims that the trial court should have awarded him attorney fees based on Faith's intransigence. "An important consideration apart from the relative abilities of the two spouses to pay is the extent to which one spouse's intransigence caused the spouse seeking the award to require additional legal services."⁴⁰ Intransigence can form the basis for attorney fees when a party engages in obstructive behavior or delay tactics, files unnecessary motions, fails to cooperate with counsel, or participates in other activities that make trial unduly difficult or unnecessarily expensive.⁴¹

In his opening brief, Ford fails to support his argument with citation to the record and relies on a case where the issue involved discovery sanctions rather than attorney fees.⁴² Additionally, he does not demonstrate how Faith's conduct

³⁷ In re Custody of Salerno, 66 Wn. App. 923, 926, 833 P.2d 470 (1992).

³⁸ RCW 26.09.140.

³⁹ RAP 10.3(a)(5); Bohn v. Cody, 119 Wn.2d 357, 368, 832 P.2d 71 (1992); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

⁴⁰ In re Marriage of Morrow, 53 Wn. App. 579, 590, 770 P.2d 197 (1989).

⁴¹ In re Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992).

caused him to incur additional fees. Rather, he simply asserts that it did. Therefore, Ford has not shown that Faith's alleged intransigence entitled him to an award of attorney fees at trial. The trial court refused to award Ford attorney fees because he has the ability to pay them. Because it was not manifestly unreasonable to do so, the trial court did not abuse its discretion.

On appeal, both parties ask this court to award them attorney fees. When considering whether to award attorney fees on appeal in dissolution cases, a court should examine the arguable merit of the issues raised and the financial resources of the parties.⁴³—

Ford seeks fees under RAP 18.9 for responding to a frivolous appeal. An appeal is frivolous if it presents no debatable issues upon which reasonable minds could differ and there is no possibility of reversal.⁴⁴ We resolve all doubts regarding the frivolous nature of an appeal in favor of the appellant.⁴⁵ Resolving all doubts in Faith's favor, we conclude that sanctions or fees are not appropriate. We decline to exercise our discretion to award fees in this case and deny Ford's request. Faith seeks fees based upon relative ability to pay. Because the trial court did not award her fees based on need, we exercise our

⁴² See Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338-41, 858 P.2d 1054 (1993).

⁴³ In re Marriage of Griffin, 114 Wn.2d 772, 779-80, 791 P.2d 519 (1990).

⁴⁴ In re Marriage of Schumacher, 100 Wn. App. 208, 217, 997 P.2d 399 (2000).

⁴⁵ Skinner v. Holgate, 141 Wn. App. 840, 858, 173 P.3d 300 (2007).

discretion under RCW 26.09.140 and deny her request for attorney fees on appeal.

CONCLUSION

The trial court did not abuse its discretion in its property distribution or award of maintenance. Nor did the trial court abuse its discretion by ordering each party to pay his or her attorney fees. Neither party is entitled to attorney fees on appeal. We affirm.

WE CONCUR:

Leach, C. J.

Denz, J.

Grosse, J.