

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Marriage of)	NO. 65994-4-I
)	
PATRICIA M. JORDAN,)	DIVISION ONE
)	
Respondent,)	
)	
and)	
)	
DENNIS W. JORDAN,)	UNPUBLISHED OPINION
)	
<u>Appellant.</u>)	FILED: May 29, 2012

Lau, J. — When dividing the property in a dissolution action, the trial court may, in its discretion, consider the separate property origin of community property as a reason for awarding a disparate share of such property to the party who had the separate property interest. Because the trial court exercised that discretion in dividing certain community property in this case and because the court did not manifestly abuse that discretion, we affirm.

FACTS

Dennis and Patricia were married in April 2005. In October 2007, Dennis quitclaimed his separate property interest in a cabin to a limited liability company (LLC) formed by the parties during their marriage. The parties each owned a 50 percent

interest in the LLC, which held three properties.

The parties separated in August 2008 and dissolution proceedings commenced in 2010. Prior to trial, the parties stipulated that the properties in the LLC and a property in Panama were all community property.

At trial, Dennis's counsel argued that, for purposes of dividing the parties' assets, the court should consider the fact that the cabin was originally his separate property. Citing In re Marriage of Nuss, 65 Wn. App. 334, 828 P.2d 627 (1992), his counsel noted that the cabin had been community property for only one-sixth of the time Dennis had owned it and that the community had made just one-sixth of the mortgage payments. Given that history, counsel argued that the cabin's value should not be divided equally but instead should be divided five-sixths to Dennis and one-sixth to the community. Patricia's counsel responded, "[T]he Nuss case does not apply to this. Nuss did not involve an LLC." Report of Proceedings (July 15, 2010) (RP) at 32.

In dividing the property, the court rejected Dennis's argument based on Nuss. After noting that Dennis had used community assets as security for a loan on the cabin during the marriage and had knowingly quit claimed his separate property interest to the community LLC, the court stated, "I don't find any equitable basis to follow Nu[ss], with respect to this cabin, and back it out of the LLC in some fashion and award it to Mr. Jordan as a separate property." RP at 35. In its written findings, the court stated, "In re Marriage of Nuss, with respect to the Mount Baker Cabin, does not apply." The court awarded the properties in the LLC to Dennis and the Panama property to Patricia. Dennis appeals.

DECISION

The goal of property division in a dissolution action is a just and equitable distribution of the parties' property and liabilities. RCW 26.09.080. In dividing the property, the trial court must consider the nature and extent of the community and separate properties, the duration of the marriage, and the economic circumstances of the parties at the time of the dissolution. RCW 26 .09.080. The court may, in its discretion, consider the separate property origin of community property as a reason for awarding a disparate share of such property to the party who had the separate property interest. Nuss, 65 Wn. App. 334. The court should also consider the age, health, physical condition, education, and future earning prospects of the parties. Friedlander v. Friedlander, 80 Wn.2d 293, 305, 494 P.2d 208 (1972). The court has broad discretion in this area and will be reversed only upon a showing of manifest abuse of discretion. In re Marriage of Rockwell, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007). Decisions in dissolution proceedings will "seldom be changed upon appeal. . . . The emotional and financial interests affected by such decisions are best served by finality." In re Marriage of Landry, 103 Wn.2d 807, 809, 699 P.2d 214 (1985).

Dennis contends the trial court erroneously concluded that it had no discretion to apply Nuss to this case. He claims the court's error is reflected in its finding that "[t]he case of In re Marriage of Nuss with respect to the Mt. Baker Cabin, does not apply." But this finding is ambiguous as to whether the court exercised its discretion under

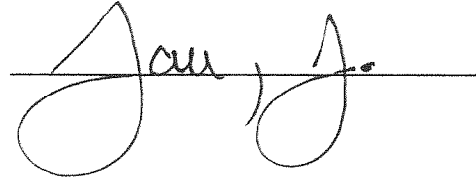
Nuss. Accordingly, we look to the court's oral ruling for clarification. Rockwell, 141 Wn. App. at 240 n.2; In re Marriage of Griffin, 114 Wn.2d 772, 777, 791 P.2d 519 (1990) (A trial court's findings may be supplemented or clarified by its oral opinion.). In that ruling, the court stated, "I don't find any equitable basis to follow [Nuss], with respect to this cabin, and back it out of the LLC in some fashion and award it to Mr. Jordan as separate property." (Emphasis added) RP at 35. This and other statements in the court's oral ruling demonstrate the court's awareness and exercise of its discretion under Nuss.

Dennis also contends the court abused its discretion in concluding that the separate property origin of the cabin did not warrant a disproportionate award of that asset in Dennis's favor. Among other things, he points out the short duration of the marriage, the lack of community contributions to the cabin value, and the fact that the community owned the cabin for only nine months. But there was also evidence that community assets were used as security for a loan on the cabin, that Patricia contributed efforts to a remodel of the cabin, and that Dennis quitclaimed the property to the LLC with donative intent. We cannot say the court manifestly abused its discretion.

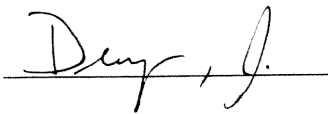
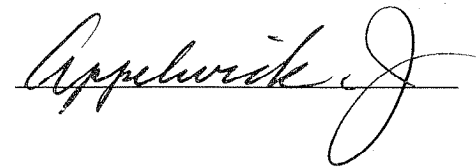
Patricia requests attorney's fees and costs on appeal due to Dennis's alleged intransigence and because of her need and Dennis's ability to pay. RCW 26.09.140

In re Marriage of Crosetto, 82 Wn. App. 545, 564, 918 P.2d 954 (1996). She contends, “[T]his appeal is not well taken and constitutes excessive litigation.” Resp’t’s Br. at 19. She also notes that unlike Dennis, she is not an attorney and therefore must retain counsel to represent her. We award her fees and costs subject to compliance with RAP 18.1(d).

Affirmed.

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

WE CONCUR:

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