IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	NO. 66138-8-I
	)	
BARBARA CONGLETON,	)	DIVISION ONE
	)	
Respondent,	)	
	)	
and	)	UNPUBLISHED OPINION
	)	
JAY CONGLETON,	)	
	)	
Appellant.	)	FILED: September 4, 2012
	)	

Leach, C.J. — Jay Congleton appeals a trial court's dissolution decree dissolving his marriage to Barbara Nystrom.[1] He challenges the court's award of the family residence to Nystrom without compensation to him for his separate property contributions and the court's provisions for payment of 2009 federal income taxes. Nystrom cross appeals, also challenging the provisions for payment of the 2009 taxes. The trial court's finding calculating the community equity in the family residence is internally inconsistent and conflicts with other findings. Additionally, the decree provisions relating to the 2009 taxes are inconsistent with the court's findings of fact and conclusions of law. Therefore, we reverse and remand for clarification of these provisions and further

[1] The amended decree of dissolution changed her name from Barbara Congleton to Barbara Nystrom.

proceedings consistent with this opinion.

FACTS

Congleton and Nystrom married in July 2003 and separated in August 2009. Neither party has any dependent child.

Shortly before marrying, the parties purchased a single-family residence in Bothell (Odin Way) that became the family home. The parties initially acquired and financed the property in Nystrom's name. Nystrom later quitclaimed an interest in the property to Congleton. They funded the purchase with a $30,000 down payment realized from the sale of stock owned separately by Congleton, a first mortgage of approximately $150,000, and a second mortgage of approximately $66,000. Within a few weeks of closing, Congleton spent $32,000 of his separate funds for various improvements to the property. The trial court found these expenditures to be a gift to the marital community. Neither party has challenged this finding.

Shortly after the parties' wedding, Congleton lost his job and initiated a lawsuit for wrongful termination and age discrimination. He began his own construction-consulting firm, Vanguard Consulting LLC, while Nystrom continued to work in commercial real estate management. In 2007, Congleton settled his lawsuit for $565,000. In an unchallenged finding, the trial court found these funds to be his separate property. He used $66,000 from the settlement to pay

off the second mortgage on Odin Way. He paid $27,500 from the proceeds for improvements to Odin Way. Neither party has challenged the trial court's finding that these improvements were a gift to the community. Throughout the marriage, Nystrom handled both the couple's finances and the bookkeeping and accounting for Congleton's business. This included filing the tax returns and making quarterly estimated tax payments from a business savings account. From January 2008 until the end of August 2009, Nystrom withdrew from the business account funds set aside for every quarterly tax payment but paid only one in 2008 and none in 2009. Nystrom represented to Congleton, the business's accountant, and the Internal Revenue Service that she had paid the quarterly taxes. At trial, the parties disputed whether it was common for them to skip quarterly payments in favor of other financial priorities and make up the difference later.

The court awarded Nystrom the Odin Way house; it awarded Congleton a rental property and a Hawaiian time-share. It ordered Nystrom to reimburse Congleton for temporary maintenance payments as well as for his jewelry that disappeared from the couple's safe deposit box while only she had access to it.

The court also found that Nystrom's failure to pay quarterly tax payments had resulted in a community tax obligation of approximately $40,000 for 2008 and $25,000 for 2009. It further found that largely due to Nystrom's self-

direction of community assets, these tax debts were divided equally between the parties. It ordered the sale of certain assets with the proceeds to be applied to the taxes and allocated the remaining tax debt equally between the parties.

The decree contains conflicting provisions. Paragraph 3.17.7 of the decree states,

> The parties shall file separately for the year 2009. Each party is ordered to pay 50% of the outstanding tax liability (personal and corporate) for 2008 and 2009. (See paragraph 3.6 which provides that the Petitioner's 50% liability for 2009 taxes has been offset against the promissory note to Respondent.)

Neither paragraph 3.6 nor any other paragraph in the decree provides for the promissory note referenced in paragraph 3.17.7. Congleton appeals the division of property and the allocation of the tax liability. Nystrom cross appeals the court's finding of the estimated 2009 tax liability. Both parties seek attorney fees on appeal.

STANDARD OF REVIEW

The trial court has broad discretion in awarding property in a dissolution and will be reversed only on a showing of manifest abuse of discretion.[2] A trial court abuses its discretion when its decision is manifestly unreasonable or is based on untenable grounds.[3] The court's findings of fact must be supported by

[2] In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999); In re Marriage of Fiorito, 112 Wn. App. 657, 667-68, 50 P.3d 298 (2002).

[3] State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

substantial evidence.[4] "Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise."[5] The court's findings of fact must in turn support its conclusions of law and decree.[6]

ANALYSIS

Both Congleton and Nystrom argue that the trial court abused its discretion in apportioning certain community assets and obligations. Congleton contends the court should have required Nystrom to reimburse him for his separate property contributions to Odin Way and for the tax payments that Nystrom misappropriated from the business account. Nystrom argues that no substantial evidence supports the court's finding fixing the community's 2009 tax liability at $25,000.

Congleton challenges finding of fact 12, in which the trial court stated its findings for the family residence value:

> 12. **Odin Way Value.** The Petitioner has had the exclusive use and enjoyment of the Odin Way home pursuant to Court Order since separation, on or about September 1, 2010. Pursuant to the Temporary Order entered October 12, 2009, Respondent paid the Petitioner maintenance of $1,000 per month to offset the monthly mortgage amount of $2,400 on the Odin Way home. The $10,500 paid to Petitioner for maintenance is an offset owed to Respondent

[4] In re Marriage of Rockwell, 141 Wn. App. 235, 242, 170 P.3d 572 (2007).

[5] Bering v. Share, 106 Wn.2d 212, 220, 721 P.2d 918 (1986).

[6] Rockwell, 141 Wn. App. at 242.

> who wrongfully paid because Petitioner ultimately waived her request for maintenance. Petitioner was also ordered to pay all utilities, homeowners dues, and perform all routine yard and home maintenance during the pendency of this litigation.
>
> The present outstanding balance on the mortgage with First Tennessee Bank remains at $248,000. The re-finance paperwork has never been provided to the court. The agreed present fair market value of this home is $415,000. Accordingly the present equity, not including the $30,000 down-payment from the Respondent and his payoff of the $66,000 initial second mortgage all paid from the Respondent's separate assets, and not including closing costs, is approximately $152,000. The court also recognizes Respondent's additional improvements he made to the community home. These additional improvements to the Odin Way home include $5,000 for landscaping and sidewalk replacement improvements, $10,000 for a new cedar deck and $8,500 for the cabinet re-facing. After reimbursement to the Respondent for his separate contributions of $151,500, the community equity to be divided is $10,500. [7]

Congleton correctly notes that this finding traces funds used to purchase and improve the property to Congleton's separate property and appears to provide for a reimbursement to him of $151,000. The decree did not award Congleton any reimbursement. In addition, in unchallenged finding of fact 14, the court found Congleton's expenditures of $9,000 for landscaping and sidewalk replacement improvements, $10,000 for a new cedar deck, and $8,500 for the cabinet refacing to be gifts to the community. Because neither party challenged this finding, it is a verity on appeal and on remand. While the trial

[7]Both parties acknowledge that finding of fact 12 contains an obvious mathematical error regarding the present equity in the home: $415,000 (fair market value) - $248,000 (mortgage) = $167,000 (equity), not $152,000 as stated in the finding.

court could have acted within its broad discretion to award the Olin Way property to Nystrom without any provision for reimbursement to Congleton, finding of fact 12 does not support the court's decree, and we cannot reconcile the inconsistencies between findings of fact 12 and 14.

Nystrom responds with an argument defending the fairness of the court's overall property distribution. While Nystrom correctly cites Washington case law describing the broad discretion of the trial court,[8] she offers no persuasive reconciliation of the inconsistencies between findings 12 and 14 or finding 12 and the decree. Her argument ignores the requirement that the court's findings support its conclusions of law and decree.

The trial court's ruling on Congleton's motion for reconsideration confounds the problem. In that motion, Congleton pointed out the mathematical error in the court's equity calculation and requested compensation from Nystrom of $107,000, reflecting the $30,000 down payment, the $66,000 payment of the second mortgage, and $11,000 for wrongfully paid temporary maintenance. The trial court denied this motion "due to the co-mingling of funds concerning the Odin Way property." We cannot reconcile this conclusion with the statement in finding 12 that Congleton is entitled to reimbursement for these items.[9]

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[8] See Friedlander v. Friedlander, 80 Wn.2d 293, 305-06, 494 P.2d 208 (1972); In re Marriage of Davison, 112 Wn. App 251, 258-59, 48 P.3d 358 (2002).

[9] We also note the inconsistency between the amount of temporary

Next, Congleton contests the court's allocation of the unpaid federal tax liability. He argues that the dissolution decree is internally inconsistent and unenforceable as written. We agree. Paragraph 3.17.7 of the dissolution decree states,

> Federal Income Tax. The parties shall file separately for the year 2009. Each party is ordered to pay 50% of the outstanding tax liability (personal and corporate) for 2008 and 2009. (See paragraph 3.6 which provides that the Petitioner's 50% liability for 2009 taxes has been offset against the promissory note to Respondent.)

In neither paragraph 3.6 nor elsewhere in the decree or findings does the court make any provision for a promissory note or a tax offset. Congleton claims that the court intended to compensate him for the missing estimated tax payments but failed to define the nature and extent of the promissory note. He asserts that this renders the decree provision for payment of federal taxes unenforceable.

Nystrom responds that the judge made a scrivener's error and intended only that the parties file separately for 2009, with each responsible for the tax due on the community income reportable on that individual's separate return. She also challenges the sufficiency of the evidence to support the trial court's finding of a community tax liability of $25,000 for 2009. Since the parties' 2009 tax liability had not been determined as of the trial date and neither party

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maintenance found to have been paid, $10,500, and the amount claimed, $11,000.

otherwise presented evidence of the amount of that liability, we agree that substantial evidence does not support the finding for the 2009 liability.

From the record, this court cannot determine which, if either, of these competing views reflects the trial judge's intentions. "The purpose of findings is to enable this court to review the questions upon appeal, and when it clearly appears what questions were decided by the trial court, and the manner in which they were decided, we think that the requirements have been fully met."[10] Where findings are incomplete or defective, the doubt may be resolved by reference to the oral or memorandum decision of the trial court.[11] But, in this case, the court made no oral ruling from which we may draw guidance. When presented with such a situation, Bowman v. Webster[12] describe three possible courses: (1) remand without reversal, giving the parties an opportunity to file additional arguments after the necessary finding has been supplied; (2) reverse and remand with instructions to the trial judge to make and enter the necessary findings and conclusions and judgment thereon from which either party may appeal; or (3) reverse and remand for a new trial.

Under the circumstances of this case, we find the second option most appropriate. While the court's decision may reflect a reasonable exercise of its

[10] Kinnear v. Graham, 133 Wash. 132, 133, 233 P. 304 (1925).
[11] Bowman v. Webster, 42 Wn.2d 129, 135, 253 P.2d 934 (1953).
[12] 42 Wn.2d 129, 135, 253 P.2d 934 (1953).

discretion, we cannot properly review the case based on the inconsistent record before us.

Each party has requested fees on appeal. We deny both requests.

CONCLUSION

The trial court's unchallenged findings are verities on appeal and on remand. We reverse and remand for clarification of the challenged findings and decree, specifically to remedy inconsistencies relating to what, if any, reimbursement Congleton should receive for his contributions to Odin Way and the proper allocation of unpaid federal tax liability.

Leach, C.J.

WE CONCUR: