IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	
	)	No. 66246-5-I
LISA LYNN TEGROTENHUIS,	)	
	)	DIVISION ONE
Appellant,	)	
	)	UNPUBLISHED OPINION
and	)	
	)	
DAVID ALAN TEGROTENHUIS,	)	
	)	
Respondent.	)	FILED: May 29, 2012

Grosse, J. — The goal of property division in a dissolution action is a just and equitable distribution of the parties' property and liabilities. The trial court's order distributing property is reviewed for an abuse of discretion, and will only be reversed if there is a manifest abuse of that discretion. A trial court does not abuse its discretion when substantial evidence supports its division of the property. Here, the trial court correctly interpreted the prenuptial agreement according to Michigan law and did not abuse its discretion in awarding a disproportionate share of the community property under Washington law, particularly here where the husband's separate property was the source for all of the marital estate. Accordingly, we affirm the trial court.

FACTS

After obtaining a dental assistant certificate in 1990, Lisa Hill was employed by David TeGrotenhuis at his newly formed dental group in Ann Arbor, Michigan, where she earned $12 to $13 an hour. Within a month of her

employment, Hill began dating TeGrotenhuis. TeGrotenhuis was going through a divorce at the time. Hill was also married and obtained a divorce in 1992.

In the fall of 1992, Hill moved in with TeGrotenhuis in his home in Howell, Michigan. She soon began to care for the home and worked less at the dental practice. Hill enrolled in school full time in 1993 and obtained a bachelor of science in geology.

While on vacation in Alaska, the parties purchased property in Homer, Alaska. Hill testified that she contributed $10,000 that she had received as a gift from TeGrotenhuis's father. The parties entered into a prenuptial agreement on December 24, 1997. Hill objected to the characterization of the Alaska property as TeGrotenhuis's separate property and the Agreement was altered to provide that Hill would receive the property after 15 years if they remained married. Hill and TeGrotenhuis were married on December 31, 1997, in Banff, Canada.

In 1998, while vacationing in San Juan County, Washington, the parties fell in love with the area. Between 1999 and 2005, the parties made a series of real estate purchases on San Juan Island.

In 2004, Hill moved to San Juan Island and TeGrotenhuis planned to follow as soon as he sold his dental practice. TeGrotenhuis was not able to sell the practice until 2009, when he finally moved to Washington. A few months later, on June 2, 2009, Hill petitioned for dissolution of the marriage.

On November 20, 2009, the court entered a temporary order awarding Hill $2,500 monthly spousal maintenance and $5,000 in temporary attorney fees.

On March 12, the spousal maintenance was increased to $3,500. The court also awarded proceeds from the property sold, including $20,000 towards Hill's attorney fees.

In addition to the property owned in Washington, the parties owned one parcel of real estate in Montana and TeGrotenhuis owned his residential property in Michigan. The court valued all of their assets over $7,000,000 with debts exceeding $4,000,000.

The trial court viewed the Washington properties still owned by the parties as mixed in character—presumptively community, but having a separate property interest:

Mount Dallas: Purchased for $507,264.14 with community debt of $250,000 and the remainder of the purchase price paid with TeGrotenhuis's separate funds. Thus, the court found the property to be 50 percent separate and 50 percent community.

The property was subdivided to a 10-acre parcel with a value of $350,000 and a 14-acre parcel with a value of $700,000. Both parcels are subject to a mortgage owing of $474,000.

702 San Juan Drive: Purchased for $617,652.18 using $420,000 in community funded loan with the remainder of the purchase price being paid through TeGrotenhuis's separate property. The court characterized the property as 32 percent separate and 68 percent community.

Present value of $2,200,000 subject to a mortgage owing of $916,000.

80 First Street: Purchased for $1,241,000 with a loan of $775,000 in community funds the remainder of purchase price was paid with TeGrotenhuis's separate funds, making the property 64 percent TeGrotenhuis's separate property and 36 percent community property.

Present value of $1,090,000 and subject to mortgage of $690,000.

80 Nichols Walk: Purchased in 2005 for $292,016.25 with $145,000 in community funds, with the remainder purchased from TeGrotenhuis's separate

property, making the property 50 percent separate and 50 percent community. Present Value: $345,000 subject to a mortgage of $131,000.

The trial court awarded each party their separate property in accordance with the prenuptial agreement and awarded the Mount Dallas property to Hill, and the other three properties to TeGrotenhuis. The Yacht Haven property which had been sold and held in trust during the dissolution was distributed to the parties. Hill appeals arguing the trial court misapplied the prenuptial agreement when it characterized the Washington property as mixed.

ANALYSIS

The parties entered into a prenuptial agreement (Agreement) which was to be interpreted in accordance with Michigan law. Neither party challenges the validity of the prenuptial agreement. Thus, the characterization of property at the time of the agreement is not at issue. Paragraphs 1 and 2 of the Agreement set forth the separate property of each and provide that the property described therein, "including any proceeds from the sale and disposition thereof, or any income earned therefrom . . ., shall be deemed as the sole and separate property of [Hill or TeGrotenhuis] for all purposes under this agreement."

Paragraph 3 provides that any property not inventoried shall be considered marital property. In the event of a divorce, paragraph 6 provides that neither party would have any right to the separate property of the opposite party, except as provided:

> [Paragraph 13] Joint Assets. Any assets acquired in joint names shall become the property of the survivor on the death of a party. If the marriage is terminated by divorce, each party shall be entitled

> to one-half (1/2) the value of any joint assets after settlement of all joint liabilities.

The trial court determined that paragraph 13 of the prenuptial agreement pertained only to property that was titled as joint tenants and not to "marital property." The trial court found that the assets were "marital property" under Michigan law and presumptively community property in Washington.[1]

Under Michigan law, the distribution of property in a divorce is controlled by statute.[2] "In dividing marital assets, the goal is to reach an equitable division in light of all the circumstances."[3] In a divorce proceeding, the court may divide all property acquired "'by reason of the marriage.'"[4] In Michigan, the trial court's first step in the division of property is to determine which assets are included in the marital estate and which are separate property.[5] The marital property is generally divided between the parties, with each party taking away their own separate estate with no invasion by the other.[6]

Hill argues that the term "joint assets" used in paragraph 13 of the Agreement necessarily means that all of the real property that is in both parties' names should be divided equally. But, the "mere fact that property may be held jointly or individually is not necessarily dispositive of whether the property is

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[1] See In re Marriage of Gillespie, 89 Wn. App. 390, 400, 948 P.2d 1338 (1997) (a party is required to rebut the presumption that the property acquired during marriage is something other than community property).
[2] Reeves v. Reeves, 226 Mich. App. 490, 493, 575 N.W.2d 1, 2 (1997) (citing M.C.L. § 552.1 et seq.).
[3] McNamara v. Horner, 249 Mich. App. 177, 188, 642 N.W.2d 385 (2002).
[4] Reeves, 575 N.W.2d at 2 (emphasis omitted) (quoting M.C.L. § 552.19).
[5] Reed v. Reed, 265 Mich. App. 131, 150, 693 N.W.2d 825 (2005) (quoting Reeves, 575 N.W.2d at 3).
[6] Reeves, 575 N.W.2d at 3.

classified as separate or marital."[7] The trial court's conclusion that the term "joint assets" did not mean any asset titled in both parties' names was correct. Such an interpretation is in accord with the intent of the parties. The prenuptial agreement was devised to protect separate property and the proceeds therefrom.

When the parties entered the agreement, TeGrotenhuis had separate property valued at over $2.75 million, while Hill's separate property had a negative $4,000 value. After the dissolution, Hill's property had a net value close to $750,000, while TeGrotenhuis net value was slightly less than $2.5 million, an amount less than that with which he entered the marriage.

The court reviews 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.[8] In a dissolution action, all property, community and separate, is before the court for distribution.[9] The relevant factors in determining a just and equitable distribution of property are provided by statute and include: "(1) [t]he nature and extent of the community property; (2) [t]he nature and extent of the separate property; (3) [t]he duration of the marriage . . .; and (4) [t]he economic circumstances of each spouse . . . at the time the division of property is to become effective."[1]

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[7] Cunningham v Cunningham, 289 Mich. App. 195, 201-02, 795 N.W.2d 826, 830 (2010).
[8] In re Littlefield, 133 Wn.2d 39, 940 P.2d 1362 (1997).
[9] In re Marriage of Stachofsky, 90 Wn. App. 135, 142, 951 P.2d 346 (1998).
[1] RCW 26.09.080; In re Marriage of Olivares, 69 Wn. App. 324, 330, 848 P.2d 1281 (1993); In re Marriage of DewBerry, 115 Wn. App. 351, 62 P.3d 525 (2003).

The trial court's findings reflect that it considered all of the factors in RCW 26.09.080, including the nature and extent of all property before it, community and separate alike. Washington courts have upheld property distribution of a greater portion of a total estate to a spouse who has greater separate property, as was the case here.[11]

Here, the court applied Washington law in a manner consistent with the intentions of the parties as expressed in the Agreement. The court found clear evidence that TeGrotenhuis's separate property proceeds were used as part payment of the purchase price for all of the Washington real property. Where the trial court found the evidence to be unclear regarding proceeds used to make improvements, it did award separate credit for those monies, characterizing them as community.

Hill does not dispute the valuation of the properties or the indebtedness attached thereto. Hill challenges the weight of the evidence used to establish TeGrotenhuis's separate property interest in the various properties, but presents no evidence to refute the court's calculations. Hill alludes to the efforts she expended to remodel and oversee the construction projects on the various properties. But the court considered those contributions in its award specifically stating that it recognized both her efforts in overseeing the construction and remodel of the properties.

Hill argues that she is entitled to an equitable right of reimbursement for

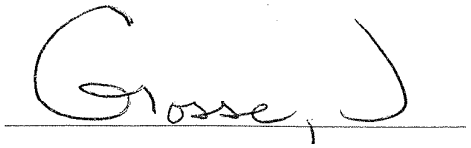
[11] See, e.g., In re Marriage of Brewer, 137 Wn.2d 756, 976 P.2d 102 (1999); DewBerry, 115 Wn. App. 351.

the repayment of the construction loan for the house on 702 San Juan Drive that was awarded to TeGrotenhuis. She does not dispute the characterization of the property as 68 percent community and 32 percent TeGrotenhuis's separate property. Rather, she argues that the $1 million loan was community property expended to improve the entire property and since that loan improved 32 percent of TeGrotenhuis's separate property she should be entitled to reimbursement of $320,000. This simply fails to take into consideration that there is still a $916,000 loan outstanding on the property.

Hill's award of the Mount Dallas property gave her equity of approximately $600,000. TeGrotenhuis's equity in the remaining three Washington properties gave him equity of $1,898,000. Additionally, TeGrotenhuis was also awarded the Montana and Michigan properties, which have a negative equity value over $200,000.[12] TeGrotenhuis's separate property contribution to the Washington properties totaled $1,062,000.

Additionally, the Yacht Haven property which was sold before the proceeding took place had remaining funds of $379,000, of which the court awarded $120,000 to Hill.

The dispositive ruling by the trial court was fair and equitable under the fact and circumstances of the case. Accordingly, we affirm.



[12] The Montana and Michigan properties both had outstanding debts.

WE CONCUR:

Leach, C.J.

Edlington, J.