

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:)	No. 66704-1-I
)	
PENNY L. SWEET,)	
)	DIVISION ONE
Petitioner,)	
and)	UNPUBLISHED OPINION
)	
KENNETH W. SWEET,)	
)	
Respondent.)	FILED: <u>October 1, 2012</u>
_____)	

Spearman, J. — Kenneth Sweet appeals the trial court’s valuation and distribution of property in the dissolution of his marriage to Penny Sweet. Substantial evidence supports the trial court’s order. We affirm the trial court’s award of assets and liabilities, but remand for the trial court to address a mathematical error.

FACTS

Kenneth and Penny Sweet married in 1999.¹ At the time of the marriage, Kenneth was an investment broker and Penny was an in-home nursing care provider.² The couple had six minor children residing with them: four were

¹ We refer to the parties by their first names for clarity.

² Although Penny had previously been licensed as a nurse, she had allowed her license to lapse and at the time of trial did not have the necessary education requirements to become relicensed.

Penny's children from prior relationships and two were biological children the couple had in common.³ The couple initially resided in Redmond, Washington, in a home Kenneth owned prior to the marriage. They subsequently purchased a home in Carnation, Washington (the "marital residence") for approximately \$1,819,000.

Kenneth was ordered to move out of the marital residence on February 9, 2011 when he was accused of raping Penny's daughter from a prior marriage. Penny filed for dissolution three days later. Kenneth was charged with several sex offenses and released on bail to await a criminal trial in October 2010. See State v. Sweet, No. 66574-0-1 (Wash. July 23, 2012).

While the dissolution proceedings were pending, Kenneth filed a series of motions requesting to borrow cash against the value of the marital community's real property. On January 13, 2010, a court commissioner ordered Kenneth be awarded \$60,000 from the proceeds of a loan against the marital residence. Further motions to borrow money were denied.

On December 7, 8 and 9, 2010, the trial court conducted a bench trial on the dissolution proceeding.⁴ On January 11, 2011, the trial court entered a decree of dissolution and findings of fact and conclusions of law, in which it

³ The couple had a third biological child, who passed away.

⁴ At the time of trial, Kenneth was in the King County Jail awaiting sentencing. He participated in a portion of the trial via telephone.

distributed the couple's assets and liabilities.⁵ The marital residence was valued at \$950,000 and Penny was awarded the equity in the residence, amounting to \$481,093. Kenneth was awarded \$60,000 in a KeyBank account characterized as "community property surplus," as well as two promissory notes valued at \$100,000 each. Kenneth and Penny were each awarded half of an insurance payout of \$19,659 on the couple's 2006 Toyota Tundra. The trial court attached a chart entitled Complete Assets and Debts to the decree of dissolution, which totaled up the assets and liabilities of each party to determine the net award. Kenneth's net award was \$798,831.50 and Penny's was \$599,177.50. The trial court entered a monetary judgment in favor of Penny for \$99,827, which was one-half of the difference between the net awards of the two parties.

Kenneth appeals the trial court's order. He contends that substantial evidence did not support the trial court's valuation of the parties' marital residence, the two promissory notes, or the amount designated as "community property surplus". He also argues that the trial court committed a mathematical error when adding the parties' assets prior to distribution, resulting in an excessively high judgment against him in favor of Penny.

DECISION

The goal of property division in a dissolution action is a just and equitable

⁵ On March 22, 2011, the court entered an Amended Decree of Dissolution to address a scrivener's error that is not at issue here.

distribution of the parties' property and liabilities. RCW 26.09.080. "The key to an equitable distribution . . . is not mathematical preciseness, but fairness." In re the Marriage of Clark, 13 Wn. App. 805, 810, 538 P.2d 145 (1975). 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 should also consider the age, health, physical condition, education and future earnings 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). A manifest abuse of discretion occurs when the court bases its decision on untenable grounds. In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). 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, 809-10, 699 P.2d 214 (1985). We review trial court findings only for substantial evidence in the record; we do not weigh the evidence or determine the credibility of witnesses. In re Pennington, 142 Wn.2d 592, 602-03, 14 P.3d 764 (2000). To determine whether substantial evidence exists to support a court's findings of fact, we review the record in the light most favorable to the party in whose favor

the findings are entered. In re Marriage of Gillespie, 89 Wn.App. 390, 403-4, 948 P.2d 1338 (1997).

1. Value of the Marital Residence

Kenneth first argues that the trial court's valuation of the marital residence at \$950,000 was not supported by substantial evidence. We will not substitute our judgment for the trial court on a factual dispute over the valuation of property. Worthington v. Worthington, 73 Wn.2d 759, 762, 440 P.2d 478 (1968). A trial court does not abuse its discretion by assigning values to property within the scope of evidence. In re Marriage of Soriano, 31 Wn. App. 432, 435, 643 P.2d 450 (1982).

The trial court's valuation of the marital residence was supported by the record. Penny testified that she believed the value of the home to be \$950,000.⁶ She argued that there was a significant amount of repair work that needed to be done, particularly to the home's high-end electronic and media systems, before the home could be listed for a higher amount.⁷ She also stated that Kenneth had installed "pinhole" cameras throughout the house, including her daughter's bedroom, the existence of which negatively affected the value of the home. At the time of trial, Penny was the party who resided in the house, as Kenneth had

⁶ Penny had a realtor's license from approximately 2001 to 2003 and worked as a sales associate at Windermere Real Estate and Executive Real Estate.

⁷ Penny testified that she did not have the funds for the necessary repairs and was therefore unable to list the house at a higher value at the time of trial.

been ordered to vacate almost two years prior following the filing of criminal charges. “An owner may testify as to the value of his property and the weight to be given to it is left to the trier of fact.” Worthington, 73 Wn.2d at 763. Kenneth points out that he presented evidence at trial from which he argued that the home’s market value was considerably higher. But because the valuation was within the range of admissible evidence, the trial court did not abuse its discretion and we will not disturb the ruling on appeal. In re Marriage of Soriano, 31 Wn. App. at 435.

2. Date of Valuation

Kenneth next argues that the trial court erred by determining the value of the marital residence on the date of dissolution, rather than the date the parties separated. He argues that he is unfairly disadvantaged by valuing the residence on the date of dissolution because Penny’s mismanagement following his removal from the premises reduced the home’s value.

The trial court has discretion to value property either at the time of separation or at the time of trial. Lucker v. Lucker, 71 Wn.2d 165, 166-68, 426 P.2d 981 (1967). In general, if property is to be valued at the date of trial rather than the date of separation, appreciation as well as depreciation in value should be considered in making an equitable division. Id.

There was evidence in the record that the “mismanagement,” to which Kenneth attributes the home’s loss of value, occurred prior to the parties’

separation. Penny testified that the property was not well maintained even while the couple resided together. She cited to long-standing debris in the yard, failure to service the home's air filtration system, and several broken appliances that were not repaired. The trial court did not abuse its discretion in determining the value of the home at the time of trial.

3. Promissory Notes

Kenneth next challenges the trial court's valuation of two promissory notes awarded as his share of the marital estate, contending he would be unable to collect on them and they were therefore worthless. However, Kenneth himself provided evidence that the face value of each note was \$100,000 and he considered them to be good investments when made.⁸ As the trier of fact, the court was free to assign the face value to the notes and weigh the credibility of Kenneth's testimony about his efforts to collect. We will not disturb this determination on appeal.

4. "Community Property Surplus"

Kenneth also alleges the trial court erred in awarding him \$60,000 designated as "Key Bank [sic] Account, i.e., Community property surplus, Account no. ****2397," claiming that such funds did not exist. In doing so, Kenneth engages in a great deal of speculation about the nature of these "ersatz" funds.⁹

⁸ Kenneth testified that he made loans to two business partners, one of which was unsecured and the other of which was secured by a piece of artwork worth \$75,000 and a third mortgage on the borrower's residence.

The clerk's minutes from the bench trial indicate that the trial court addressed the parties about the division of property during the trial and also made preliminary findings about property value. However, this portion of the verbatim report of proceedings has not been made available to us by Kenneth. "The party seeking review has the burden of perfecting the record so that this court has before it all of the evidence relevant to the issue." Allemeier v. University of Washington, 42 Wn. App. 465, 472, 712 P.2d 306 (1985). Without a full record, we are unable to determine whether substantial evidence exists to support the trial court's findings. See, e.g., In re Custody of A.F.J., 161 Wn. App. 803, 806 n. 2, 260 P.3d 889, review granted in part, denied in part, 172 Wn.2d 1017, 262 P.3d 64 (2011) (where an appellant fails to supply a verbatim report of proceedings, our ability to fairly evaluate the findings in light of the record before the trial court is necessarily compromised). In such situations, we accept the trial court's findings of fact as verities. Id.; see also Happy Bunch, LLC v. Grandview North, LLC, 142 Wn. App. 81, 88 n. 1, 173 P.3d 959 (2007); St. Hilaire v. Food Servs. of Am., Inc., 82 Wn. App. 343, 351–52, 917 P.2d 1114 (1996). Accordingly, we do not reach the merits of this issue.

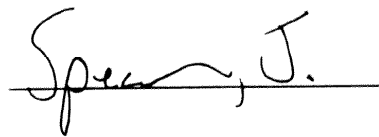
⁹ Kenneth speculates that the \$60,000 figure was derived from mortgage payments Penny made on the home he owned prior to the marriage. The more likely explanation was that the trial court assigned to Kenneth the \$60,000 he was permitted to borrow against the equity in the marital residence. In a financial declaration dated September 16, 2009, Kenneth claimed \$60,000 in liquid assets, with the disclaimer "funds not accessible."

5. Mathematical Error

Finally, Kenneth contends the trial court made a mathematical error in calculating the total value of the assets awarded to him in order to divide the marital estate. He observes that the source of the mistake appears to be the trial court's inadvertent failure to adjust the final tally after making a handwritten change to the award of the value of a 2006 Toyota Tundra. Penny concedes the scrivener's error. However, she argues that it was of no consequence because the trial court should have awarded her the entirety of the value of the vehicle, given that Kenneth received the insurance payout in its entirety.

We agree with Kenneth that the total value of the assets awarded to him appears to have been miscalculated. However, we cannot assume, as Kenneth urges us to, that the trial court intended to distribute the assets precisely equally between the parties. We remand for the trial court to correct the alleged error or otherwise clarify its disposition of the parties' assets.

We affirm.



WE CONCUR:

