

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GELSEY HANSON,)	No. 66749-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
ZACHARY HARJO,)	UNPUBLISHED
)	
Appellant.)	FILED: <u>September 24, 2012</u>
)	
)	

Cox, J. — Zachary Harjo appeals pro se from the trial court's equitable distribution of property following the dissolution of a committed intimate relationship. Because there is an inconsistency between the court's findings and the calculation of the judgment amount, we remand for the court either to clarify its findings with regard to the amount of rental income owed to Hanson or to adjust the property equalization transfer payment. However, because Harjo otherwise fails to demonstrate that the trial court abused its discretion, we affirm.

Zachary Harjo and Gelsey Hanson had an eight-year committed intimate relationship.¹ In 2004, the parties were living together and Hanson inherited funds following her father's death. She and Harjo decided to purchase a home. While both parties were involved in the purchase and Hanson could not afford the mortgage payments without Harjo's income, the title and mortgage were in her name only. Hanson also used approximately \$50,000 of her separate funds

¹ See Olver v. Fowler, 161 Wn.2d 655, 657 n.1, 168 P.3d 348 (2007) (adopting term "committed intimate relationship" for what was formerly described as a "meretricious relationship").

toward the down payment and closing costs. Based on Harjo's higher earnings, the parties agreed that he would pay more than half, approximately 57 percent, of the monthly mortgage payment. Both parties spent money to improve the house, but neither kept records of those expenditures. Over the several years that followed, Harjo undertook several substantial remodeling projects.

In 2005, Hanson and Harjo jointly entered into an agreement to buy a condominium unit that was under construction as investment property. By the time the sale closed at the end of 2007, the condo was worth less than the purchase price. Harjo and Hanson rented the condo to tenants.

Both parties worked in the restaurant industry and decided to open a bar/restaurant together. They entered into a partnership agreement to jointly own the business and financed it with a \$79,000 home equity secured line of credit and \$20,000 contributions from each. The tapas restaurant and bar, Ocho, opened in January 2008, and was a success from the start. The parties were able to repay the line of credit within the first year of business.

Hanson and Harjo ended their relationship in January 2009, but continued to live in the same house and share responsibility for managing the restaurant. In May 2009, during a confrontation at the restaurant, Hanson struck Harjo. As a result, Hanson was excluded from the premises by a no-contact order, and had no further role in managing the restaurant. After the no-contact order was issued, Hanson resided in the house. After arranging for the tenants to vacate

the condo, Harjo resided there.

Hanson commenced this action, seeking a buyout of her 50 percent interest in Ocho and reimbursement for half of the rents collected from rental of the condo unit after the parties separated and for the rental value of the unit after Harjo began residing there. Pursuant to an agreed order, the business was appraised and valued at \$222,000. Neither party disputed that valuation. Hanson claimed she was entitled to payment of \$111,000 for her one-half interest in Ocho plus \$6,500 for rental income/rental value of the condo.

Harjo argued that the house should be treated as a community-like asset. He claimed he was entitled to be reimbursed for his labor in renovating the property. He further claimed that Hanson's interest in the business was less than 50 percent, because she had had no role in managing or working at the restaurant since June 2009. He also contended that the amount owed to Hanson for her interest in the restaurant should be reduced to compensate for the fact that he had not drawn a full salary in 2009 and 2010.

After the trial that took place over six days, the trial court agreed with Harjo that the home purchased in Hanson's name should be treated as a community-like asset subject to equitable division. The court awarded the business and condo to Harjo and the home to Hanson.

In its amended judgment, the court awarded a total property equalization

transfer payment to Hanson of \$52,205. This figure is based on the following: Harjo owes Hanson a total of \$117,500 (\$111,000 representing 50 percent of the value of Ocho, plus \$6,500 for post-separation condo rent). This amount was offset by \$65,295 Hanson owes to Harjo (\$53,054 for Harjo's interest in the house, \$2,241 reimbursement for condo dues, and a \$10,000 "home lien" for Harjo's labor on the house). The court determined that each party should bear their own outstanding tax liabilities, including Hanson's approximately \$30,000 tax liability from 2008 and 2009. The court left for future determination the income distributions from Ocho and business tax liability allocation for 2010.

Harjo appeals.

DIVISION OF PROPERTY

The division of property following the dissolution of a committed intimate relationship must be just and equitable.² Once the court finds a committed intimate relationship exists, all property the parties acquired through their efforts during the relationship is before the court for distribution.³ The court may characterize property as "separate" and "community" by analogy to marital property.⁴

While the distribution of property must be just and equitable, it does not

² In re Marriage of Lindsey, 101 Wn.2d 299, 304, 678 P.2d 328 (1984); In re Long and Fregeau, 158 Wn. App. 919, 928-29, 244 P.3d 26 (2010).

³ In re Marriage of Lindemann, 92 Wn. App. 64, 69, 960 P.2d 966 (1998).

⁴ Connell v. Francisco, 127 Wn.2d 339, 351, 898 P.2d 831 (1995); see RCW 26.16.010-.030 (definitions of separate and community property).

have to be equal.⁵ When making an equitable property division, the court is not required to use a precise formula or calculate the distribution with mathematical precision.⁶ We review the trial court's distribution of property for abuse of discretion.⁷ A court's decision is based on untenable grounds if the factual findings are not supported by the record.⁸

Home Equity

Harjo contends that the court inequitably divided the parties' property because he did not receive credit for the fact that during the relationship, his earnings were used to pay more than half of the monthly mortgage payment. Specifically, because he paid \$7,000 more than Hanson paid toward the mortgage, he claims the amount he owes to Hanson should be reduced by that amount. We disagree.

Harjo fails to explain or offer any authority in support of his position, which is essentially that this portion of his earnings should be treated as separate property. To the contrary, Harjo's earnings during his relationship with Hanson are analogous to the earnings of a spouse during marriage, presumptively

⁵ In re Marriage of Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984).
⁶ In re Marriage of Martin, 22 Wn. App. 295, 298, 588 P.2d 1235 (1979).
⁷ In re Meretricious Relationship of Sutton and Widner, 85 Wn. App. 487, 491, 933 P.2d 1069 (1997).
⁸ In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

characterized like community property.⁹ The parties' decision regarding allocation of Harjo's earnings does not change the character of the community-like asset. Moreover, all community-like funds paid toward the mortgage increased the equity in the home which was divided equally, after segregating the separate funds from Hanson's inheritance. There was no abuse of the trial court's discretion.

Condominium

Harjo also contends the trial court was required to divide the negative equity in the condo based on its finding that the unit was worth approximately \$48,000 less than the mortgage at the time of trial. Again, we disagree.

Without citing any relevant authority, Harjo claims this negative equity was a community-like debt and the trial court was required to apportion it equally between the parties. But the negative equity as it existed at the time of trial was only a theoretical debt. It is unknown when Harjo will sell the property and what its value will be at that point. In other words, while the evidence established that the condo was worth less than the outstanding debt at the time of trial, there was no evidence showing whether and to what extent Harjo will realize a debt. Thus, the trial court did not abuse its discretion by failing to divide and apportion the negative equity.

⁹ See Lindemann, 92 Wn. App. at 72; Koher v. Morgan, 93 Wn. App. 398, 402, 968 P.2d 920 (1998).

Harjo also argues that the court's findings are inconsistent with its calculation. He points out that the court found that he collected rent of \$7,204 after the parties' separation, but then calculated that he owed Hanson \$6,500 for half of the rents collected, thus implying that he collected a total of \$13,000 in rental income. In its response to Harjo's post trial motion below, Hanson suggested that the court amend its findings to clarify that Hanson is entitled to compensation not only for rental income collected, but also for the rental value of the condo after Harjo occupied it. The trial court declined to adopt this finding. We agree that the figure used to calculate the amount owed to Hanson for her half-interest in rent is unsupported by the court's findings. Accordingly, we remand for the trial court either to clarify its findings or to adjust its calculation of the equalization payment.

Ocho

Harjo argues that the trial court abused its discretion when it divided the value of the business equally. He claims that the court should have offset the amount owed to Hanson to compensate him for the value of his managerial labor in 2009 or 2010.

The trial court found, in accordance with the business appraisal, that the

value of managerial services at Ocho was \$75,000 per year. The trial court further found that Harjo and Hanson received unequal amounts of compensation for 2009 (Hanson received approximately \$13,000 more than Harjo), and Harjo received less salary than that to which he was entitled for both 2009 and 2010. The court also expressly found that Harjo should be compensated for the difference between the value of his services in managing the restaurant between June 2009 to the end of 2010 and the actual compensation he received.

Harjo fails to acknowledge, however, that in addition to finding that Harjo was entitled to additional compensation for his work in 2009 and 2010, the court also determined that Hanson, who received no compensation or benefits from the business since June 2009, was entitled to share in the profits for 2010. This claim was not liquidated. It appears therefore that the court's findings about compensation due to Harjo are relevant to the calculation, yet to be determined, of the distribution amount owed to Hanson for 2010.

We affirm in part, but remand for the trial court either to clarify its finding with respect to the amount due to Hanson for rental income or to adjust the equalization payment accordingly.

Cox, J.

WE CONCUR:

Jan, J.

Becker, J.