

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)
)
SUDESH S. KOTHARI,) No. 66927-3-1
)
) DIVISION ONE
)
Appellant/)
Cross-Respondent,)
)
and) UNPUBLISHED OPINION
)
) FILED: June 11, 2012
KUNJLATA S. KOTHARI,)
)
)
Respondent/)
Cross-Appellant.)
)
_____)

Leach, C.J. — Sudesh Kothari appeals a dissolution decree, final parenting plan, and order of child support. Kunjlata Kothari cross-appeals. Because we conclude Sudesh’s noncompliance with the rules of appellate procedure precludes review of his claims, and because Kunjlata’s cross-appeal lacks merit, we affirm.

FACTS

The Kotharis married in 1993 and divorced in 2011. They have two teenage children. Sudesh has a PhD in biogenetics and has worked in the biotech industry. At the time of trial, he had not worked for a company for more than seven years but had spent several years trying to develop an ultimately

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unsuccessful start-up company. Kunjlata has a graduate degree in business administration and works for Microsoft, earning in excess of \$200,000 per year.

At the conclusion of the dissolution proceedings, the court entered a lengthy memorandum decision. Among other things, the court found that the parties had “a history of . . . acting independently with money” and had each lost substantial community funds through irresponsible investments and risky endeavors. The court also found no evidence supporting Sudesh’s “theories that the wife has hidden substantial moneys in unknown foreign ‘secret accounts’” or diverted community funds to improper purposes under the guise of loan payments. The court awarded each party the financial accounts, personal property, and vehicles in their name or possession. It awarded Sudesh the condominium owned by the community, his retirement account, and half of Kunjlata’s 401(k) fund. It awarded Kunjlata the other half of her 401(k) fund, the family home, and a \$50,000 judgment against Sudesh’s share of her 401(k) for conduct that “escalated the wife’s attorney fees and his own fees to a wholly unnecessary level.”

The court found that Sudesh had been voluntarily unemployed for a substantial period but was capable of obtaining employment and earning at least \$4,000 to \$5,000 per month. The court awarded him temporary maintenance of \$2,000 per month for one year “to maintain a home and act as a father to his two children.” Sudesh has been incarcerated, however, since July 2011 on charges

that he unlawfully entered Kunjlata's residence and assaulted her.

The court adopted the parenting evaluator's recommendation and designated Kunjlata the primary residential parent. The court ordered Sudesh to pay Kunjlata \$100 per month in child support beginning in 2011.

Sudesh appeals.¹ Kunjlata cross-appeals.

DECISION

Our review is governed by principles that apply equally to litigants who retain counsel and those who appear pro se.² We view the evidence in the light most favorable to the prevailing party and defer to the trial court on matters of witness credibility and conflicting testimony.³ We only review findings to which error is assigned and that review is limited to determining whether the findings are supported by substantial evidence.⁴ We consider only the evidence that was before the trial court. See RAP 9.1 through 9.11. Arguments that are not supported by pertinent authority, references to the record, or meaningful analysis need not be considered.⁵

¹ We deny Sudesh's motion to modify the commissioner's ruling striking his "Response to Reply Brief of Respondent" because the brief is not authorized by the Rules of Appellate Procedure.

² In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

³ Hegwine v. Longview Fibre Co., 132 Wn. App. 546, 556, 132 P.3d 789 (2006), aff'd, 162 Wn.2d 340, 172 P.3d 688 (2007).

⁴ Hegwine, 132 Wn. App. at 555-56.

⁵ RAP 10.3(a); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by authority); State v. Elliott, 114 Wn.2d 6, 15, 785 P.2d 440 (1990) (insufficient argument); Saunders

We will not disturb rulings concerning parenting plans and child support absent a manifest abuse of discretion.⁶ Such rulings are seldom changed on appeal because the emotional and financial interests affected by them are best served by finality.⁷ An abuse of discretion must also be shown before we will disturb a court's property distribution.⁸ The trial court is in the best position to determine what is fair and equitable and has broad discretion in distributing property in dissolution proceedings.⁹

Turning to the appeals before us, we conclude that neither party has demonstrated a basis for relief. Despite notice that his briefs violated specific rules of appellate procedure, Sudesh did not amend his filings and remains in violation of the rules. The briefs contain no page references to a record that includes over 1,300 pages of transcripts, nearly 1,200 pages of clerk's papers, and a number of lengthy exhibits. The briefs contain no assignments of error, no citations to authority, no discussion of the applicable standard of review, and no meaningful legal analysis. As Kunjlata points out, these deficiencies make it

v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (issues unsupported by adequate argument and authority); State v. Camarillo, 54 Wn. App. 821, 829, 776 P.2d 176 (1989) (no references to the record), aff'd, 115 Wn.2d 60, 794 P.2d 850 (1990).

⁶ In re Marriage of Christel, 101 Wn. App. 13, 20-21, 1 P.3d 600 (2000) (parenting plan); In re Marriage of Fiorito, 112 Wn. App. 657, 663, 50 P.3d 298 (2002) (child support).

⁷ See In re Marriage of Booth, 114 Wn.2d 772, 776, 791 P.2d 519 (1990); In re Parentage of Jannot, 149 Wn.2d 123, 127-28, 65 P.3d 664 (2003).

⁸ In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999).

⁹ Brewer, 137 Wn.2d at 769.

nearly impossible for her to respond. Neither Kunjlata nor this court has any obligation to search the record for the testimony, exhibits, or other portions of the record that Sudesh challenges or relies upon.¹ Nor are we required to flesh out his conclusory arguments or search the law for authority supporting them. We conclude that the deficiencies in Sudesh's briefs preclude review.

We note, however, that the majority of Sudesh's claims are not reviewable in any event because they rest on allegations of false testimony or the trial court's alleged failure to credit or rely on certain evidence. The persuasiveness, credibility, and weight of the evidence are matters for the trier of fact and are not subject to review by this court.¹¹

In her cross-appeal, Kunjlata contends the court abused its discretion in dividing the parties' property. She calculates that the court divided the property 80/20 percent in favor of Sudesh. She requests "a fair and equitable" division of 53/47 percent. This would be achieved, she contends, by reducing Sudesh's

¹ In re Estate of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998) (courts are not obligated "to comb the record" where counsel has failed to challenge specific findings and support arguments with citations to the record); Cowiche, 118 Wn.2d at 819 ("It is not the function of the appellate court to search through an entire deposition to locate relevant testimony."); Orwick v. City of Seattle, 103 Wn.2d 249, 256, 692 P.2d 793 (1984) ("It is not the function of trial or appellate courts to do counsel's thinking and briefing."); Mills v. Park, 67 Wn.2d 717, 721, 409 P.2d 646 (1966) ("We are not required to search the record for applicable portions thereof in support of the plaintiffs' arguments."); Fishburn v. Pierce County Planning & Land Servs. Dep't, 161 Wn. App. 452, 468, 250 P.3d 146 (courts will not comb the record to find support for appellant's arguments), review denied, 172 Wn.2d 1012 (2011).

¹¹ State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

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share of her 401(k) fund from \$235,000 to \$51,750. Kunjlata has not demonstrated an abuse of discretion.

RCW 26.09.080 authorizes courts to dispose of marital property in whatever manner “shall appear just and equitable after considering all relevant factors.” Relevant factors include the duration of the marriage, the nature and extent of community and separate property, the economic circumstances of the parties, the need for maintenance, and the dissipation or wasting of marital assets.¹² Here, the court's distribution followed findings that the parties had a 17-year marriage, had been equally irresponsible with community funds, and had very different financial circumstances and future earning power. These findings support a disparate division in Sudesh's favor.

Kunjlata argues, however, that an 80/20 percent division is untenable. But her calculation is based on an incomplete list of the awarded assets. As Sudesh pointed out in his response to Kunjlata's motion for reconsideration below, a consideration of other assets, including investment and savings accounts, arguably results in a significantly less disparate division.

¹² RCW 26.09.080; In re Marriage of Wallace, 111 Wn. App. 697, 708, 45 P.3d 1131 (2002) (trial court may consider party's waste of assets); In re Marriage of Williams, 84 Wn. App. 263, 267-71, 927 P.2d 679 (1996) (courts consider duration of marriage, parties' financial resources, ability to meet their needs independently, and conduct depleting marital assets); In re Marriage of Steadman, 63 Wn. App. 523, 528, 821 P.2d 59 (1991) (trial court may consider one spouse's “gross fiscal improvidence” or “squandering of marital assets”); In re Marriage of Rink, 18 Wn. App. 549, 553, 571 P.2d 210 (1977) (court may consider maintenance in dividing property).

Furthermore, the trial court repeatedly noted that percentages based on snapshots of the current value of real property assets, especially those with a negative value, are not particularly meaningful in the current economic climate.¹³ In these circumstances, we conclude Kunjlata has not demonstrated a manifest abuse of discretion.

Kunjlata next contends the court abused its discretion in awarding Sudesh maintenance. She argues that this award, together with her other obligations, leaves her with a negative cash flow that adversely affects her ability to meet the children's needs. She also argues that the award is untenable because Sudesh was voluntarily unemployed and allegedly refused to find work as ordered prior to trial.

Awards of maintenance are "a flexible tool by which the parties' standard of living may be equalized for an appropriate period of time."¹⁴ "The only

¹³ The court stated in part:

it used to be quite easy to do a chart of assets and liabilities and then figure out what an appropriate percentage point is to split between a husband and a wife and depending on their various earning capacities and child situation.

It's much more difficult now given the fact that we have so many real estate assets that have negative value. . . .

When a party makes a decision that they want to keep the house and they're going to have to service the mortgage, then I don't think it's at the same time appropriate to say, "Well, we'll give you minus 240 [thousand] on your balance sheet because you are taking the responsibility of taking that house." I mean, that is—it's just using the same analysis we used to use when the market was either rising or stable, it just doesn't work here. So, I mean, if one party wants to take the [Mercer Island] house and keep it, they're going to have the responsibility of serving it.

limitation on amount and duration of maintenance under RCW 26.09.090 is that, in light of the relevant factors, the award must be just.”¹⁵ “The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property.”¹⁶ The spouse alleging error bears the burden of showing an abuse of discretion on the part of the trial court.¹⁷

In awarding monthly maintenance of \$2,000 for the calendar year 2011, the trial court acknowledged that Sudesh had been voluntarily unemployed, but concluded that he needed short term support “to be able to maintain a home and act as a father to his two children.” Considering the parties’ financial circumstances, the relevant statutory criteria,¹⁸ and the short duration of the

¹⁴ In re Marriage of Washburn, 101 Wn.2d 168, 179, 677 P.2d 152 (1984).

¹⁵ In re Marriage of Bulicek, 59 Wn. App. 630, 633, 800 P.2d 394 (1990).

¹⁶ In re Marriage of Estes, 84 Wn. App. 586, 593, 929 P.2d 500 (1997).

¹⁷ In re Marriage of Sheffer, 60 Wn. App. 51, 56, 802 P.2d 817 (1990).

¹⁸ RCW 26.09.090(1) provides in part:

(1) In a proceeding for dissolution of marriage . . . the court may grant a maintenance order for either spouse The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or

maintenance obligation, we cannot say the court abused its discretion.¹⁹

Kunjlata argues in conclusory fashion that the court abused its discretion in requiring her to pay the expenses for a condominium that the court divided equally between the parties. She contends the court “made no finding that [she] had any ability to pay those costs in addition to her obligations for her children and the mortgage on the family home.” But she cites no authority requiring such a finding. Moreover, the court awarded Kunjlata all rental income from the condominium, the condominium was leased through January 2012, and it was to be listed for sale when the lease expired. Kunjlata has not demonstrated an abuse of discretion.

Finally, Kunjlata has moved to seal the briefs on appeal or, in the alternative, to remove them from the court’s website. Citing GR 15 and GR 22, she contends the briefs “contain statements which are highly offensive to her, are not of legitimate concern to the public, and constitute an unreasonable

domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

¹⁹ To the extent Kunjlata contends maintenance should be reconsidered in light of Sudesh’s unanticipated incarceration, those changed circumstances are more properly addressed in a modification proceeding in the superior court.

invasion of her and her children’s privacy.” She notes that Sudesh alleges in his briefs that she is a pathological liar, that she stole community assets, and that she has attempted suicide. She also claims that the briefs contain sensitive financial information, and that unlike superior court filings, the briefs on appeal are available by typing a litigant’s name into a search engine.

Initially, we note that the parties’ financial source documents and confidential reports have been sealed on appeal. The only question before us is whether the parties’ *briefs* on appeal should be sealed or, alternatively, whether the briefs should be removed from this court’s website. It is Kunjlata’s burden to identify “compelling privacy or safety concerns that outweigh the public interest in access to the court record.”² This burden includes application of the five-part analysis set forth in Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982).²¹ She has not met this burden.

Kunjlata nowhere addresses the Ishikawa factors. In addition, she fails to demonstrate a compelling basis for sealing. Sudesh’s allegations of perjury, theft, and emotional instability are just that—allegations. As such, they do not raise compelling privacy or safety concerns. The references in Kunjlata’s briefs to the parties’ net worth and assets, while possibly warranting redaction, do not warrant sealing the briefs.²² Kunjlata does not request redaction, however, and

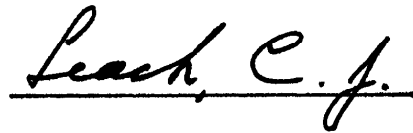
² GR 15(c)(2) (emphasis omitted); see In re Dependency of G.A.R., 137 Wn. App. 1, 11, 150 P.3d 643 (2007).

²¹ Indigo Real Estate Servs. v. Rousey, 151 Wn. App. 941, 215 P.3d 977 (2009).

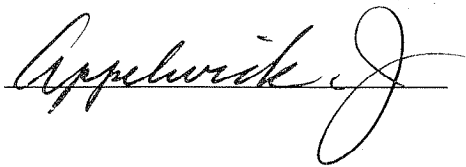
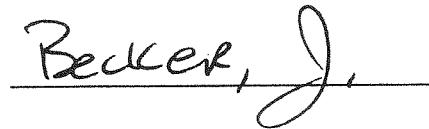
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has not complied with this court's general order requiring submission of a proposed redacted brief when redaction is sought.²³ Her motion to seal the briefs or remove them from this court's website is denied.

Affirmed.

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WE CONCUR:

Handwritten signature of Appelwick, J. in cursive script, underlined.Handwritten signature of Becker, J. in cursive script, underlined.

²² "A court record shall not be sealed . . . when redaction will adequately resolve the issues." GR 15(c)(3).

²³ See General Order of Division I, *In re Sealed or Redacted Materials* (Wash. Ct. App.), available at http://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders&div=1.