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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of ROGER DALE ST. GEORGE, Appellant, v. JEANNE ELLEN ST. GEORGE, Respondent.	No. 48190-1-II UNPUBLISHED OPINION

LEE, J. — Roger Dale St. George appeals the decree of dissolution and the trial court's related findings of fact and conclusions of law. Roger[1] argues that the trial court erred when it (1) characterized Jeanne Ellen St. George's interest in inherited properties and money as separate property; (2) valued the parties' business asset at $547,400; (3) ordered Roger to pay spousal maintenance for an indefinite period; (4) did not reduce the equalization judgment by the amount of community debt he paid or by the amount of Jeanne's life insurance; (5) did not reimburse him for the amount of community debt he paid; and (6) distributed the parties' assets and liabilities. We hold that the trial court did not err and affirm.

[1] Both parties share the same last name, so we use their first names for clarity. We intend no disrespect.

FACTS

I. PROCEEDINGS

Roger and Jeanne married on August 12, 1972. On August 20, 2014, Roger filed a petition for dissolution. At that time, Roger was 64 years old and Jeanne was 61 years old. After the petition was filed, Jeanne continued to reside in the family home, and Roger moved to a hotel and then a rental home.

Pretrial, Roger offered to pay all the community obligations, other than Jeanne's vehicle fuel and maintenance and her household utilities. The trial court entered a temporary order requiring Roger to (1) continue to operate and manage the parties' business and its convenience stores; (2) pay the parties' community debts and expenses including the mortgage and insurance on the family home, the parties' auto, life, and medical insurance policies, the parties' existing credit card balance, and the parties' cell phone bill; and (3) pay monthly maintenance of $1,350. The trial court ordered Jeanne to pay the household utilities and any debts that she incurred after August 18, 2014. The case was tried on January 16, 2015.

II. PROPERTY

At trial, Jeanne testified that she had a checking account where she placed the $65,000 she inherited from her parents and the monthly spousal maintenance she received from Roger. The inheritance money that Jeanne received was originally in a checking account that she held with her parents as joint tenants with right of survivorship. Jeanne was added to her parents' accounts because she was the executor of their estate. After her parents passed away, she placed the money she inherited into the parties' joint account, but withdrew it after Roger filed the dissolution petition. Jeanne also inherited, along with her two brothers, an interest in some properties in Colorado that were set to be sold. The properties were sold in January 2015, and the proceeds

were split between Jeanne and her two brothers. Jeanne also had an IRA, and Roger had a retirement portfolio.

The parties had several financial accounts, including an Edward Jones account and a Bank of America account. The parties also had a family home, which still had a mortgage, but was sold pursuant to the trial court's order. The parties received $150,721 for the home. Roger had paid about an additional $18,000 of the mortgage on the home prior to its sale. He requested to be reimbursed for this expense, but the trial court denied his request because the additional mortgage payments were considered in determining the temporary maintenance amount.

The parties each held a 50 percent interest in St. George Stores, Inc., which owned and operated three franchise convenience stores. The parties agreed that the three stores were worth $547,400, which is comprised of $300,000 in goodwill and $247,400 in a long-term tenured rebate from the franchisor if the stores were sold. The rebate fluctuated depending on the profitability of the stores and was subject to forfeiture if certain conditions were not met. The tenured rebate amount was set at $247,400 by the franchisor on September 25, 2014. Roger noted that the stores' goodwill was the harder part of valuation.

Roger proposed a valuation figure of $547,400 on October 6, and Jeanne agreed. Roger later argued that the stores should not be valued at $547,400 due to the unpredictability of the rebate.

III. FINANCIAL AND EMPLOYMENT STATUS

Roger had a Bachelor of Arts degree and obtained a Masters in Business Administration. He had primarily managed the business and its stores since its formation.

Jeanne had attended one year of college and worked as a receptionist shortly after college. During the marriage, she assisted with the cash deposits and reporting for the business and stores, but she primarily stayed at home and took care of the house. Jeanne admitted that she could find a minimum wage job but testified that she did not have any skills, would not be able to make any significant amount of money, and would need assistance from Roger for the rest of her life.

IV. FINAL ORDERS

On September 24, 2015, the trial court made its findings of fact and conclusions of law, and entered the decree of dissolution. In reaching its decision, the trial court considered the value of the property that the parties would receive, the 42-year length of the marriage, and the parties' earning power. The trial court's stated goal was not to distribute the property precisely at 50/50 but to be fair and equitable.

The trial court found that (1) the money Jeanne inherited from her parents and her inherited interest in the Colorado properties were her separate property; (2) the value of the stores was $547,400; and (3) that $2,243 would be an appropriate amount of maintenance for Jeanne until she begins to receive Social Security, at which time the maintenance would be reduced to equalize income. The trial court used the $547,400 valuation figure proposed by Roger for the stores because it was the best evidence of their value. Alternatively, the trial court offered to provide additional time for Roger to sell the stores and split the proceeds with Jeanne. Roger declined the trial court's offer of additional time to sell the stores.

With regard to maintenance, the trial court found that there was a great disparity in earning potential as Roger had a masters degree and plenty of work experience, while Jeanne had a limited

education and no significant work experience for quite some time. The trial court ordered that maintenance was modifiable to allow the parties to more accurately reflect their income in the future. The trial court also ordered Roger to pay an equalization judgment of $139,048.14 after dividing up the community assets and awarding Roger the parties' stores and the Edward Jones account.

Roger appeals.

ANALYSIS

A. ASSIGNMENT OF ERROR

As an initial matter, Jeanne argues that Roger failed to assign error to the specific findings of fact that he appeals and include a reference number for each finding; thus, the trial court's findings are verities on appeal, which only leaves the issue of whether the trial court's findings support its conclusions of law. We disagree.

Under RAP 10.3(g), an appealing party must include a separate assignment of error for each finding of fact appealed and must include reference to each finding by number. However, RAP 1.2(a) states that the Rules of Appellate Procedure will be "liberally interpreted to promote justice and facilitate the decision of cases on the merits" and that cases will not be decided on compliance with these rules "except in compelling circumstances where justice demands." In cases where the nature of the appeal is clear, the relevant issues are argued in the body of the brief, citations are provided as to not greatly inconvenience the court by the failure to assign error, and the respondent is not prejudiced by such failure, there is no compelling reason for the appellate court not to exercise its discretion to consider the merits of the case or issue. RAP 1.2(c); *see Stiles v. Kearney*, 168 Wn. App. 250, 260, 277 P.3d 9 (reviewing the merits of an issue where the nature of the challenge was clear in appellant's brief), *review denied*, 175 Wn.2d 1016 (2012).

Here, the nature of Roger's appeal is clear despite his failure to include specific reference numbers for each challenged finding of fact. The relevant issues are argued in his opening brief, he provided citations to the record, and Jeanne was able to recognize each alleged error and respond to each argument presented by Roger. Therefore, we address Roger's claims on the merits.

B. CHARACTERIZATION OF INHERITANCE

We review a trial court's characterization of separate or community property de novo. *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002), *review denied*, 148 Wn.2d 1023 (2003). We will only reverse a trial court's factual findings if substantial evidence does not support them. *Id*. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. *Miles v. Miles*, 128 Wn. App. 64, 69, 114 P.3d 671 (2005).

A spouse's separate property is that property owned before the marriage or acquired during the marriage by gift, bequest, devise, or inheritance, together with the "rents, issues and profits thereof." RCW 26.16.010. Courts presume that all assets acquired during the marriage are community property. *In re Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995); *see* RCW 26.16.030. A party may rebut this presumption by showing that it acquired the assets as separate property. *Short*, 125 Wn.2d at 870. A party must present clear and convincing evidence that the acquisition fits within a separate property provision. *In re Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003). Clear and convincing evidence is that which shows the ultimate fact at issue to be highly probable. *Dalton v. State*, 130 Wn. App. 653, 666, 124 P.3d 305 (2005), *review denied*, 158 Wn.2d 1003 (2006).

Once property is established as separate property, it is presumed that it remained separate property "in the absence of sufficient evidence to show an intent to transmute the property from separate to community property." *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). As long as the property can be traced and identified, it will retain its separate property character. *Baker v. Baker*, 80 Wn.2d 736, 745, 498 P.2d 315 (1972). But if separate and community funds become indistinguishably commingled, all of the commingled funds and all property acquired with them will be deemed community property. *In re Estate of Witte*, 21 Wn.2d 112, 125, 150 P.2d 595 (1944).

If a trial court mischaracterizes property, we will remand the matter for further consideration only when "(1) the trial court's reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way." *In re Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P.2d 8 (1989). Appellate courts are reluctant to revisit a trial court's distribution of property when the trial court mischaracterizes property as separate or community property but otherwise makes a just and equitable distribution. *See In re Marriage of Pilant*, 42 Wn. App. 173, 181, 709 P.2d 1241 (1985) (holding that the erroneous valuation of a pension was not reversible error where distribution was otherwise fair and equitable).

1. Colorado Property Inheritance

Roger argues that the trial court mischaracterized Jeanne's interest in the Colorado properties as separate property. We disagree.

Here, the trial court characterized Jeanne's interest in the Colorado properties as separate property after (1) Jeanne testified that she inherited a shared interest in the properties located in Colorado, and (2) examining the deeds for the properties which were admitted as a trial exhibit.

Jeanne's inherited interest in the properties was shared with her two brothers. While Roger argues that Jeanne's name was added to the deed over 10 years ago and that all property acquired during the marriage is presumed to be community property, this presumption may be overcome by clear and convincing evidence. Jeanne presented such evidence through the deeds for the properties and through uncontroverted testimony that she inherited her interest in the properties from her parents after their deaths, and she shared her inherited interest with her brothers. In light of the evidence, we hold that the trial court properly characterized Jeanne's interest in the Colorado properties as separate property.

2. Money Inheritance

Roger argues that the trial court mischaracterized the money that Jeanne inherited from her parents as separate property. We disagree.

The trial court characterized the money that Jeanne inherited from her parents as separate property after Jeanne testified that she inherited the money from her parents. Roger argues that Jeanne acquired the money during the marriage because she was the sole surviving joint tenant of her parents' account when her parents passed, and therefore, the money is presumed to be community property. However, Jeanne provided undisputed testimony that she inherited the money from her parents and that she was added to her parents' accounts as their executor. Although Jeanne placed the funds in the parties' joint account before the petition for dissolution was filed, she removed the same funds after the petition was filed and the funds were traceable and identifiable. Jeanne provided unchallenged testimony as to the amount of money inherited, and Roger does not dispute Jeanne's testimony; he merely relies on the community property presumption.

The record is not clear as to the length of time Jeanne's inheritance money remained in the parties' joint account. However, there is no indication from the record that the trial court would have awarded Jeanne's inheritance money to Roger even if the property had been characterized as community property. Thus, in light of the clear and convincing evidence that the money was Jeanne's inheritance, and was traceable and identifiable, we hold that the trial court did not mischaracterize the money that Jeanne inherited from her parents.

C. VALUATION OF BUSINESS ASSET

Roger argues that the trial court erred when it valued the parties' stores at $547,400. We disagree.

We review the valuation of a business for an abuse of discretion. *Suther v. Suther*, 28 Wn. App. 838, 839-40, 627 P.2d 110, *review denied*, 95 Wn.2d 1029 (1981). The trial court has discretion to consider a variety of factors in assessing the value of a closely held business. *In re Marriage of Gillespie*, 89 Wn. App. 390, 403, 948 P.2d 1338 (1997). When the trial court values a closely held business for purposes of a dissolution, it "must set forth on the record which factors and method were used in reaching its finding" of value. *In re Marriage of Hall*, 103 Wn.2d 236, 247, 692 P.2d 175 (1984).

In determining whether substantial evidence exists to support a trial court's finding, the record is reviewed in the light most favorable to the party in whose favor the findings were entered. *DeBenedictis v. Hagen*, 77 Wn. App. 284, 291, 890 P.2d 529 (1995). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the matter asserted. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012), *cert. denied*, 133 S. Ct. 889 (2013).

Here, the trial court's valuation of the parties' stores was based on the agreed upon value of goodwill and the long-term tenured rebate. At trial, the parties testified that they had agreed the value of the stores' goodwill was $300,000. The parties also testified that the stores' long-term tenured rebate was valued at $247,400 on September 25, 2014 by the franchisor. Together, the parties agreed that the total value of the stores was $547,400 in October 2014.

Roger argues that the trial court erred in its valuation because the long-term tenured rebate fluctuated and was subject to forfeiture. Although Roger presents a number of alternative methods that other trial courts have used to assess assets that fluctuate in value, substantial evidence, through testimony and exhibits, supported a value of $547,400. The long-term tenured rebate figure was proposed by Roger, agreed to by the parties, and Roger noted that the harder part of valuation was the stores' goodwill. Also, the trial court provided Roger with the option of selling the stores and splitting the proceeds, but he declined. Based on the evidence, we hold that the trial court did not abuse its discretion in determining the value of the stores.

D. SPOUSAL MAINTENANCE

Roger argues that the trial court erred when it ordered him to pay spousal maintenance indefinitely. We disagree.

The trial court has wide discretion in its grant of maintenance. *In re Marriage of Bulicek*, 59 Wn. App. 630, 634, 800 P.2d 394 (1990). Absent erroneous factual findings, a trial court's award of spousal maintenance will only be overturned if there is a manifest abuse of discretion. *Washburn*, 101 Wn.2d at 179.

A trial court may grant a maintenance order, in an amount and for a period of time the court deems "just," after considering all pertinent factors, including:

> (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 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.

RCW 26.09.090(1). Indefinite maintenance awards are generally disfavored, but such awards in a reasonable amount are proper when it is clear the party seeking maintenance will not be able to contribute significantly to his or her own livelihood. *In re Marriage of Valente*, 179 Wn. App. 817, 822, 320 P.3d 115 (2014).

The trial court found that Roger had earned an MBA during the marriage and Jeanne only had one year of college right after high school, which left her "with no ability at her age to be retained [sic] or to have income in any significant amount." Clerk's Papers (CP) at 106. Therefore, there was "a huge discrepancy in earning power." CP at 106. The trial court also noted the great length of the marriage and the fact that Jeanne had no significant work experience for quite some time.

Roger argues that awarding maintenance indefinitely is reversible error without a finding that the recipient is incapable of earning an adequate income, and that the evidence does not

support such a finding because Jeanne is in general good health, worked before, and was capable of finding minimal employment. But the trial court made such a finding here. The trial court found that Jeanne had only "one year of college which took place directly after high school, leaving [her] with no ability at her age to be retained or to have income in any significant amount." CP at 106. The trial court based its finding on her age, her dated and insignificant work experience, and her limited education, which was supported by substantial evidence. The trial court also made its maintenance order modifiable to more accurately reflect the parties' income in the future. Therefore, we hold that the trial court did not abuse its discretion its maintenance order.

E. REDUCTION OF EQUALIZATION JUDGMENT

Roger argues that the trial court erred when it did not reduce the equalization judgment by the amount of credit card debt paid by Roger and by the amount of Jeanne's life insurance because the trial court ordered an equal division of community assets. Roger also argues that Jeanne failed to include the proper value of the IRA awarded to her. We disagree.

First, the trial court expressed that its intent in ordering an equal distribution of the property was not to be precise but to be fair and equitable. Second, the trial court explicitly ruled that Roger would not be credited with the amount of credit card debt paid since it found that the debt was paid off by the marital community, Roger had total control of the community business and earning capacity, and he was paying minimal maintenance. Third, although the trial court awarded Jeanne's life insurance to her as separate property; the equalization judgment did "reflect a 50/50 division of the community assets" as ordered by the trial court, and noted by Roger. Br. of Appellant at 39. Fourth, the trial court acknowledged the incorrect value of Jeanne's IRA that was

reflected in its original order and allowed for a revision, which Jeanne made and initialed next to in the final order.[2] Therefore, we hold that Roger's claim fails.

F. REIMBURSEMENT FOR COMMUNITY DEBT PAID

Roger argues that the trial court erred when it did not reimburse him for the amount of community debt he paid. Post-trial, Roger reminded the trial court that it had ruled that he would receive reimbursement for the mortgage payments paid during the separation. However, nothing in the record shows that the trial court made such a ruling. Also, the amount of temporary maintenance in this case was relatively low because the mortgage payments and other community debt paid by Roger were considered in setting the temporary maintenance. Therefore, we hold that the trial court did not err.

G. DISTRIBUTION OF ASSETS AND LIABILITIES

Roger argues that the trial court erred when it distributed the parties' assets and liabilities because of the claims that he raised above. We disagree.

In a dissolution action, the trial court must dispose of the property in a fair and equitable manner after considering all relevant factors including, but not limited to (1) the nature and extent of the community property; (2) the nature and extent of the separate property; (3) the duration of the marriage; and (4) the economic circumstances of each spouse at the time of the property division. RCW 26.09.080. A fair and equitable division "does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past

[2] However, we note that Roger is correct in regard to his claim of a scrivener's error. During trial, Jeanne identified that her IRA was held at Bank of America. Post-trial, there was some confusion as to whether Jeanne's IRA was held at Bank of Pacific or Bank of America. Jeanne's IRA is held at Bank of America.

and present, and an evaluation of the future needs of parties." *In re Marriage of Crosetto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996).

A trial court has considerable discretion in determining what is fair and equitable and in making a property division, and this court will not reverse absent a showing of manifest abuse of that discretion. *In re Marriage of Larson & Calhoun*, 178 Wn. App. 133, 138, 313 P.3d 1228 (2013), *review denied*, 180 Wn.2d 1011 (2014). A trial court's decision in a dissolution action will be affirmed unless no reasonable judge would have reached the same conclusion. *In re Marriage of Kim*, 179 Wn. App. 232, 240, 317 P.3d 555, *review denied*, 180 Wn.2d 1012 (2014). "The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court." *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985).

Here, the trial court considered the relevant factors before making its decision, including: the value of the property, the 42-year duration of the marriage, and the great disparity in earning power of the parties. The trial court distributed the property with a goal of providing the parties with a relatively equal future. In doing so, because Roger decided to keep the stores, the trial court sought to award Jeanne an equitable amount of other assets in order to help balance the divisions of property. In light of the record, we hold that the trial court did not abuse its discretion in distributing the parties' assets and liabilities.

ATTORNEY FEES

Jeanne argues that she is entitled to attorney fees on appeal because she is unemployed and dependent on Roger. Under RAP 18.1(c), when a party makes a claim for attorney fees on appeal, it "must serve upon the other [party] and file a financial affidavit no later than 10 days prior to the date the case is set for oral argument or consideration on the merits." Here, Jeanne's claim for

attorney fees is not accompanied by a financial affidavit; she merely relies on her assertion of unemployment and dependency. Therefore, we decline to award Jeanne attorney fees.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Lee, J.

We concur:

Maxa, A.C.J.

Melnick, J.