

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Committed and Intimate
Relationship of

GARY INGRAM,

Respondent,

v.

MARIJO RIDDLE,

Appellant.

No. 40220-3-II

UNPUBLISHED OPINION

Worswick, A.C.J. — Marijo Riddle appeals from the trial court’s denial of her motion for reconsideration and clarification regarding the valuation and distribution of a boat as part of a committed intimate relationship action.¹ She argues that the trial court miscalculated the relative contribution of the parties, which resulted in an improper increased share award to her former partner, Gary Ingram. We reverse and remand.

¹ Our Supreme Court now uses the term “committed intimate relationship” in lieu of “meretricious relationship” because of the latter’s inherently negative connotations. *Olver v. Fowler*, 161 Wn.2d 655, 657 n. 1, 168 P.3d 348 (2007). We also adopt the use of “committed intimate relationship.”

FACTS

Riddle and Ingram lived together from 1984 until April 2004. In 2006, the parties jointly invested in a boat called “China Boat.” Clerk’s Papers (CP) at 80. Ingram contributed \$80,000 to the purchase and Riddle contributed \$175,000. Soon after they took delivery, however, the parties uncovered a series of problems, including poor workmanship. As a result, they reached an agreement with the boat broker to return the boat. The broker gave Riddle and Ingram a note for \$105,000 and placed \$150,000 cash into an escrow account.

The parties then purchased a 1999 Bayliner for \$193,000. In order to pay for the Bayliner, Riddle and Ingram took out a \$50,000 loan. And after the Bayliner purchase was finalized, the broker paid the \$105,000 note. The parties then repaid the \$50,000 loan. This left approximately \$62,000 in cash from the entire transaction, which Ingram kept.

Ingram filed a petition to dissolve their committed intimate relationship in 2008. On November 16, 2009, the trial court entered a final order on the committed intimate relationship action, which included findings of fact and conclusions of law.² The trial court concluded the following with regard to the China Boat and the Bayliner:

The parties had an implied partnership with respect to the Friendship boat (China Boat) they purchased together in 2006. They were tenants in common in that boat and remain so in the subsequent purchase of the 1999 Bayliner. [Ingram] should be awarded a 40% interest and [Riddle] awarded a 60% interest based on the difference in their respective contribution to the acquisition of that asset.

(Issue of the proceeds of the [China Boat] that were received by [Ingram] but not accounted for in the acquisition of the Bayliner requires clarification by the court)

² A transcript of any trial proceedings before this date is not in the record.

CP at 81. The trial court also ordered that the “net proceeds [of the 1999 Bayliner] shall be shared 40% to [Ingram]; 60% to [Riddle].” CP at 82. And under a heading entitled “Proceeds from sale of [China] Boat” it simply stated “(Pending Clarification).” CP at 82.

Also on November 16, the trial court heard oral argument on a motion for reconsideration and clarification from Riddle. Riddle sought clarification and an award of the \$62,000 in excess proceeds from the sale of the China Boat retained by Ingram and reconsideration of the percentage allocated to each party as their interest in the China Boat and the Bayliner. At the hearing, Riddle’s counsel argued as follows:

Thank you. This is a motion in which we ask the Court to clarify the \$62,000 that is the difference between what the China boat [sic] sold for [\$]225,000 and what the Bayliner, [\$]193,000, was purchased for. We can account for about \$12,000. \$7,000 was returned to [Ingram] at the time that the Bayliner was purchased. We can account for, again, the rest of that. About \$3,700 was spent getting the boat ready, including painting the bottom, an additional \$1,300 might have been spent on incidentals. I know [Ingram] has submitted a very large declaration in which he details what he says he put into the China boat [sic], but, first of all, he did not put \$98,000 into the China boat [sic]. He put in [\$]80,000. That’s clear from both Mr. Powell’s testimony and the trial exhibits number 67 and 74. The \$16,000 that was due to the parties as the buyer were spent on the China boat [sic]. However, it is the amount that increased its value from the original purchase price of \$238,500 that was actually paid to the \$255,000 that we got.

Essentially, I think what he’s talking about is that, somehow, he should have a larger percentage of what was put into the China boat [sic]. But, again, the trial exhibits clearly indicate that he put in [\$]80,000—or he got credit for [\$]80,000. She put in \$175,000. Mathematically, when you look at that percentage—and, of course, the Bayliner is being allocated based on some kind of a partnership agreement and a tenancy in common of the parties, and that, of course, has to then be allocated based on the percentage of the contribution. If you look at it mathematically, what that means is that [Riddle] has actually put in about 69 percent, 68.8 percent to be precise, not the 60 percent that the Court found.

And those are the two issues that really are primarily for the Court's consideration. And I don't think that the Court—I think that the Court made the ruling, but I don't think that the Court really clarified that difference.

Verbatim Report of Proceedings at 4-6.

On December 2, 2009, the trial court denied Riddle's motions by letter ruling.³ The trial court entered an order denying Riddle's motions several days later. Riddle now appeals.

ANALYSIS

Reconsideration of the Ownership Interest in the Bayliner

Riddle first contends that the trial court abused its discretion when it allocated a mathematically incorrect percentage to each party in the Bayliner and failed to grant her motion for reconsideration. Riddle argues that the trial court improperly applied an equitable standard of distribution instead of basing the percentages on the relative contributions of the parties.

We do not disturb a trial court's property distribution absent an abuse of the court's broad discretion. *In re the Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 (1985). And motions for reconsideration under CR 59 are best left to the sound discretion of the trial court and are also not reversed absent a showing of manifest abuse of discretion.⁴ *Wilcox v. Lexington Eye*

³ No specific reasons for the denial were included in the trial court's letter to the parties. It simply stated that "[a]fter reviewing the exhibits in the above referenced case I have determined that all my previous rulings stand. Therefore, [Riddle]'s motion for reconsideration is denied." CP at 129.

⁴ CR 59 provides in relevant part:

(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and

Inst., 130 Wn. App. 234, 241, 122 P.3d 729 (2005). The court abuses its discretion when it bases its decision on untenable grounds or for untenable reasons. *In re the Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989).

The issue here is whether the trial court may award property acquired by parties to a committed intimate relationship post-separation in an equitable fashion or whether it must award the property pursuant to partnership law. The trial court here appears to have based its decision using a hybrid method by recognizing the existence of an implied partnership but then making a determination of the percentages in an equitable manner under committed intimate relationship law.⁵ The Bayliner and the China Boat were clearly purchased after the parties separated.

reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

...

(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;

(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

⁵ Ingram's counsel argues that the trial court's equitable distribution of property under committed intimate relationship law was proper.

The application of the wrong legal standard is an abuse of discretion. *Mayer v. Sto Indus. Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006). The trial court here found an implied partnership, which the parties do not dispute, but erred in failing to correctly allocate the percentage of ownership based on partnership law.⁶ While property acquired during a committed intimate relationship is subject to equitable division by the trial court, property acquired after separation is not. *Soltero v. Wimer*, 159 Wn.2d 428, 433-34, 150 P.3d 552 (2007) (the trial court makes a just and equitable distribution of property acquired during the relationship). On remand, the trial court should enter a revised award that considers the relative interests of the Bayliner to the parties based on their actual capital contributions, adjusted for any monies owed to either partner for operation or improvements to the boat.⁷ Thus, Riddle's argument prevails.

⁶ RCW 25.05.330 provides in relevant part:

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, except, in the case of a limited liability partnership the partner shall make such contribution only to the extent of his or her share of any unpaid partnership obligations for which the partner has personal liability under RCW 25.05.125.

⁷ Riddle's calculation of the percentages is correct: $\$80,000/\$255,000 = 31.37\%$ and $\$175,000/\$255,000 = 68.63\%$.

Clarification of the Award of Proceeds from the China Boat

Riddle also contends that the trial court abused its discretion when it denied her motion for clarification and failed to allocate the proceeds from the sale of the China Boat relative to the contributions of the parties. This issue, however, is just an extension of the previous issue because there is no dispute that the funds used from the sale of the China Boat were used to purchase the Bayliner. It also appears that the trial court's order expressly stated that the appropriation of the excess proceeds would be clarified later but the record lacks any such clarification. Thus, Riddle's argument on this point, for the same reasons above, also prevails. The trial court was required to allocate the proceeds from the sale of the China Boat in relative proportion to the contribution of the parties.

Reversed and remanded for further proceedings consistent with this opinion.

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.

Worswick, A.C.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.

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