

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>In re the Marriage of:</b>	)	<b>No. 28008-0-III</b>
<b>WILLIAM OURADA, Jr.,</b>	)	
	)	<b>Division Three</b>
<b>Appellant,</b>	)	
	)	<b>UNPUBLISHED OPINION</b>
<b>and</b>	)	
	)	
<b>SHANNON OURADA,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

BROWN, J. — William Ourada, Jr., appeals the court’s division of property upon dissolution of his 14-year marriage to Shannon Ourada. He contends the court erred by (1) failing to total the assets and liabilities to determine whether there is a just and equitable division, (2) awarding a disproportionate share of the assets to Ms. Ourada without making findings of fact required by RCW 26.09.080, and (3) awarding her real property that both parties agreed should go to him. Because the record is inadequate for review, we remand for further proceedings consistent with this opinion.

FACTS

The parties were married on November 7, 1993, and separated on August 4, 2007. They have three minor children of the marriage. The parenting plan and child support order are not at issue in this appeal. Within the child support worksheets, Ms. Ourada was assigned a net income of \$1,984 and Mr. Ourada a net income of \$1,208.

During the marriage, the parties acquired the following real property: a home on Stevenson Court in Otis Orchards (value \$170,000 with \$70,000 owing); a home on Campbell in Otis Orchards (value \$90,000 with \$95,000 owing), 19 acres in Lone (court's valuation \$50,000), and 27 acres in Reardon (court's valuation \$33,000). The parties do not dispute any of the property valuations. They agreed that the Stevenson Court home should be awarded to Ms. Ourada and the Campbell home to Mr. Ourada.

During trial, the parties agreed that the lone property should go to Mr. Ourada. He valued it at "mid forties to mid fifties," while Ms. Ourada proposed a value of \$80,000. Mr. Ourada testified that he personally built an A-frame cabin on the lone property, which has no running water or electricity. Report of Proceedings (RP) at 217. He said "really only seven acres that are useable on it" but he considered the lone property far more important to him than the Reardon property. RP at 36, 44. On cross-examination, he did state that he did not care if Ms. Ourada received the lone property. But upon further cross-examination, he clarified "I have a lot of my family's memories there. I would rather keep it. I have my family reunions up there, and my kids love it when I go up there with them. It is very personal to me." RP at 159. Ms. Ourada did

not use the lone cabin after the parties' separation and proposed in pretrial documents that the property be awarded to Mr. Ourada. Both parties assumed it would go to him and he requested that the court award it to him. At trial, Ms. Ourada said it "is negotiable" but that she would "rather him be able to have it." RP at 215.

With respect to the Reardon property, Mr. Ourada testified they purchased it for \$36,000, but that the value is impaired because "you can't really get a well out there . . . [and] you can't really use the land." RP at 43. Mr. Ourada said he was open to listing the land and letting the market dictate its worth. Or, if Ms. Ourada wanted it he agreed it could go to her. Ms. Ourada said they bought the land as a retirement home site. She said she believed it was worth \$45,000 and that she would like to have it.

Mr. Ourada's employment and business interests were another pertinent topic at trial. He is experienced in the hardwood flooring business. In 2005, he sold his half interest in a former company (Blue Ribbon Hardwood Floors) to his partner for \$187,000. In 2006, Mr. Ourada and his brother started a new company, Thomas Michael Construction (an LLC). They are the only two employees and equally share the workload and net proceeds. Mr. Ourada admitted, however, that he is the "main principal" in the business and is teaching his brother how to do floors. RP at 119, 120. Despite this, Mr. Ourada is shown on the books as a five percent owner in the company. He explained this is for licensing and bonding purposes because of his wife's poor credit. But he admitted that once the divorce is final, he will instantly go to

50 percent ownership with no cost to him. The value of the business is not disclosed in the record. In 2008, the company's sales were slow due to the down economy and totaled \$108,329. Mr. Ourada's personal net income was \$34,400.

After trial, the court discussed the property division in its oral ruling. The court stated it would adopt Mr. Ourada's plan for asset distribution with some exceptions.

The court stated:

The lone property, again, I got the impression Mr. Ourada kind of thought that was a big White Elephant out there that he is kind of ambivalent about. Ms. Ourada said she wanted it. The property values were stated which had some variability. I am picking a figure that is a little bit towards the middle here. It will be awarded to her with a value of \$50,000. She evidentially thinks it is a gold mine and she can do something with it, so I say more power to her; she can have it and do something with it.

Clerk's Papers (CP) at 22. Mr. Ourada's counsel inquired whether the court meant lone or Reardon. The court answered lone, and then stated that the Reardon property will be awarded to Mr. Ourada at a value of \$33,000.

The court later entered findings of fact, conclusions of law and a decree of dissolution—all drafted by Mr. Ourada's counsel. The findings expressly incorporate by reference the oral ruling. In its written findings, the court listed the parties' community and separate property. Specific valuations were placed on all of the community property. None of the property valuations are challenged. The court said nothing in its oral ruling about Mr. Ourada's business, and it is not listed as an asset in the findings

of fact.<sup>1</sup> In conclusion of law 3.4, the court stated, “The distribution of property and liabilities as set forth in the decree is fair and equitable.” CP at 42.

In the decree, the court awarded specified property items to Mr. Ourada valued at \$207,115 and liabilities of \$98,200, for a net award of \$108,915. The court awarded specified property items to Ms. Ourada valued at \$276,818 and liabilities of \$70,000, for a net award of \$206,818. Mr. Ourada’s counsel then added the two net amounts for a total of \$315,773, “which divided by two causes each to receive \$157,888.50, resulting in an equalization payment from wife to husband in the sum of \$48,951.50.” CP at 53. Mr. Ourada’s counsel inserted the \$48,951.50 equalization payment as an item in his property award.

At presentment, the court struck out the equalization payment calculation and deleted the \$48,951.50 payment from Mr. Ourada’s property award. The court instead inserted as part of Mr. Ourada’s property award, “The flooring business w/his brother.” CP at 51. No value was assigned to the business interest. No discussion by the court is reflected in the record, as no presentment hearing transcript has been submitted on appeal. Mr. Ourada appeals the property division.

#### ANALYSIS

The issue is whether the trial court abused its discretion in its distribution of the

---

<sup>1</sup> Mr. Ourada’s plan for asset distribution partially adopted in the court’s oral ruling is apparently included in the Joint Trial Management Report, which has not been designated as part of the record on appeal.

marital property.

In a marriage dissolution, the trial court must divide property in a just and equitable manner after considering all relevant factors, including the nature and extent of the community and separate property, the length of the marriage, and the resulting economic circumstances of each spouse when the property is divided. RCW 26.09.080. See *In re Marriage of Zahm*, 138 Wn.2d 213, 218, 978 P.2d 498 (1999); *In re Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338 (1997) (trial court's paramount concern in dividing property is the economic condition in which the decree leaves the parties). The court is not required to equally divide the community property. *White v. White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001). "A fair and equitable division by a trial court 'does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of the parties.'" *Zahm*, 138 Wn.2d at 218-19 (quoting *In re Marriage of Crosetto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996)). The court has broad discretion in distributing the marital property, and its decision will be reversed only for manifest abuse of that discretion. *In re Marriage of Muhammad*, 153 Wn.2d 795, 803, 108 P.3d 779 (2005). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

First, contrary to Mr. Ourada's argument, the court did have before it the asset and liability totals in the findings of fact and decree documents that his own counsel submitted. The sole exception is Mr. Ourada's business, which the court itself added in as his asset in the decree.

It appears the court may have simply used the business as the "equalizer" instead of the \$48,951.50 payment proposed by Mr. Ourada, but we cannot reason further without a record of the presentment hearing to review. Mr. Ourada fails to mention the business asset on appeal in his briefing. He does not argue one way or the other that the court erred in considering the business asset as part of his property award. And he does not argue on appeal that the court erred in deleting the proposed \$48,951.50 equalization payment. Thus, it is difficult to discern the exact point of Mr. Ourada's argument. Therefore, Mr. Ourada makes no showing that the court abused its discretion by inserting the business in his asset column.

Next, the court's oral comments in awarding the lone and Reardon properties are tantamount to findings of fact because the oral ruling was expressly incorporated into the written findings. Ms. Ourada fails to recognize that the oral opinion was incorporated into the findings. We review findings of fact for substantial evidence. *In re Marriage of Zier*, 136 Wn. App. 40, 45, 147 P.3d 624 (2006). "Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true." *Thompson v. Hanson*, 142 Wn. App. 53, 60, 174 P.3d 120 (2007).

It is apparent from the record developed by the parties that in awarding the lone and Reardon properties, the court mixed up the parties' testimony. Ms. Ourada said she would like the Reardon property, not the lone property. The court commented that Mr. Ourada considered the lone property to be a "White Elephant," but the more reasonable inference is that he was referring to the Reardon property as unusable due to lack of water. Although Mr. Ourada did state at one point during cross-examination that he did not care if Ms. Ourada got the lone property, he clearly backtracked from that statement and requested the property. Ms. Ourada initially said it was "negotiable" but ultimately said he should get the property. In this situation, the court's findings with respect to the lone and Reardon properties are not supported by substantial evidence.

Finally, Mr. Ourada correctly argues the written findings contain no evaluation of the statutory factors or other fairness considerations for an unequal property division (if there was an unequal division). The court's oral ruling was largely a criticism of Ms. Ourada's financial behaviors and an observation that a down economy has slowed Mr. Ourada's earnings and thus he is "not the goose who laid the golden egg." CP at 20. No discussion of the statutory factors is in the oral ruling. Nothing in the record before this court shows the trial court was mindful of the RCW 26.09.080 factors when making the property division. See *In re Marriage of Steadman*, 63 Wn. App. 523, 526, 821 P.2d 59 (1991) (court obligated to make findings reflecting consideration of parties' respective circumstances); *In re Marriage of Rink*, 18 Wn. App. 549, 553, 571 P.2d 210



(1977) (same).

The parties refer to purported comments by the court at the presentment hearing that its property distribution was made on the belief Mr. Ourada could more quickly make up the difference, or make up the financial losses better than Ms. Ourada.

While it seems likely that the trial court inserted the business as Mr. Ourada's asset in recognition that it had value and presented him earning opportunity, no presentment hearing transcript is included on appeal so no statements by the trial court are available to review. Mr. Ourada does correctly point out that Ms. Ourada's income is significantly higher than his, thus suggesting he could not make up financial losses any better than her. In any event, the absence of any reasoning by the trial court in the record frustrates review.

Ms. Ourada argues the property division can be upheld because Mr. Ourada committed a fiduciary breach by "acing" her out of the business and its goodwill value and that the resulting loss to her is relevant to the property award. Evidence and reasonable inferences exist from which the trial court could have accepted or rejected a fiduciary breach claim, but we cannot tell without the court's reasoning before us. Mr. Ourada explained that reduction of his business interest on the books to five percent was a legitimate business decision and that he was not trying to minimize his involvement in the business. But nothing in the record shows that the court addressed the issue or made a finding either way. Therefore, we have no ability to assess Ms.

Ourada's fiduciary breach argument on appeal.

In sum, the court's property division may well have been within its discretion, but we cannot provide review without the necessary record. An equal distribution is not required. The court's mixing up the lone and Reardon properties is an apparent mistake, but probably does not itself appear to render the overall property distribution an abuse of discretion. Nevertheless, the record shows no findings by the trial court pertaining to the relevant factors under RCW 26.09.080 from which this court can determine that the property distribution was just and equitable or not. We cannot apply an abuse of discretion standard without a record to review. Accordingly, we remand for adequate findings and to provide the opportunity for the trial court to revisit disposition of the lone and Reardon properties.

Ms. Ourada asks for attorney fees for a frivolous appeal, but, as noted in our reasoning, we cannot say Mr. Ourada's claims are baseless and without merit. Therefore, we deny her request.

Remanded for proceedings consistent with this opinion.

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

---

Brown, J.

WE CONCUR:

No. 28008-0-III  
*In re the Marriage of Ourada*

---

Kulik, C.J.

---

Sweeney, J.